



Reprinted
February 26, 2002

ENGROSSED SENATE BILL No. 71

DIGEST OF SB 71 (Updated February 25, 2002 1:42 PM - DI 96)

Citations Affected: IC 20-8.1; IC 22-3; IC 22-4; noncode.

Synopsis: Various labor matters. Changes the requirements for rest breaks for children who are employees. Provides that a child less than 18 years of age working between the hours of 10 p.m. and 6 p.m. must be accompanied during those hours by another employee at least 18 years of age if the establishment is open to the public. Reduces worker's compensation to an employee by 15% for failure to use safety equipment or failure to obey certain rules of the employer (instead of denying compensation altogether). Provides for 8% interest from the date of filing an application for an adjustment of claim concerning the payment of worker's compensation. Provides worker's compensation benefits to an employee who was traveling to or from or engaged in the duties of employment at the time of a terrorist attack and was injured or died as a result of the attack. Provides for changes to benefits due for worker's compensation, including the second injury fund, average weekly wage for a second injury or occupational disease, and disabled from trade compensation. Raises the average weekly wage used to
(Continued next page)

Effective: July 1, 2002.

Harrison, Alting

(HOUSE SPONSORS — WEINZAPFEL, WHETSTONE, SCHOLER,
KLINKER)

January 7, 2002, read first time and referred to Committee on Pensions and Labor.
January 28, 2002, reported favorably — Do Pass.
February 1, 2002, read second time, amended, ordered engrossed.
February 4, 2002, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 11, 2002, read first time and referred to Committee on Labor and Employment.
February 21, 2002, amended, reported — Do Pass.
February 25, 2002, read second time, amended, ordered engrossed.

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compute benefits for permanent partial impairment, temporary total disability, temporary partial disability, and total permanent disability, and benefit levels for degrees of permanent impairment. Revises the maximum compensation under worker's compensation that may be paid for an injury, occupational disease, or death. Establishes the second injury fund for occupational diseases. Raises the unemployment compensation maximum wage credits. Establishes work sharing unemployment compensation benefits. Repeals the one week waiting period for unemployment compensation. Makes conforming amendments.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

ENGROSSED SENATE BILL No. 71

A BILL FOR AN ACT to amend the Indiana Code concerning labor.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-8.1-4-20.5, AS ADDED BY P.L.122-2001,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2002]: Sec. 20.5. (a) Except as provided in subsection (b), this
4 section applies to occupations for which a child less than eighteen (18)
5 years of age may be employed or allowed to work under this chapter
6 but does not apply to children subject to:
7 (1) section 2 of this chapter; or
8 (2) section 20(m)(2) or 20(m)(3) of this chapter.
9 ~~(b) This section does not apply to a child less than eighteen (18)~~
10 ~~years of age employed by a camp or other facility that:~~
11 ~~(1) provides an opportunity, either gratuitously or for~~
12 ~~compensation, for outdoor group living for all or any part of a~~
13 ~~day;~~
14 ~~(2) provides recreational, health, educational, or sectarian related~~
15 ~~activities; and~~
16 ~~(3) is operated by a nonprofit entity.~~
17 ~~(c)~~ **(b)** A person, firm, limited liability company, or corporation that
18 employs a child less than eighteen (18) years of age shall provide **a one**

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(1) or more rest break of breaks totaling at least thirty (30) minutes to a child who is scheduled to work at least ~~six (6)~~ **eight (8)** consecutive hours.

(d) The rest break must be available to the child during the time beginning ~~three (3)~~ hours after and ending ~~five (5)~~ hours after the child begins the child's period of duty.

SECTION 2. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 25.5. (a) This section does not provide an exception to the hours a child is permitted to work under section 20 of this chapter.**

(b) It is unlawful for a person, firm, limited liability company, or corporation to permit a child who is:

(1) less than eighteen (18) years of age; and

(2) employed by the person, firm, limited liability company, or corporation;

to work after 10 p.m. and before 6 a.m. in an establishment that is open to the public unless another employee at least eighteen (18) years of age also works in the establishment during the same hours as the child.

SECTION 3. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:**

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

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- 1 (B) Fifty dollars (\$50) per instance for each violation
 2 identified in a subsequent inspection.
 3 (C) Seventy-five dollars (\$75) per instance for a third violation
 4 that is identified in a subsequent inspection.
 5 (D) One hundred dollars (\$100) per instance for a fourth or
 6 subsequent violation that:
 7 (i) is identified in an inspection subsequent to the inspection
 8 under clause (C); and
 9 (ii) occurs not more than two (2) years after a prior violation.
 10 (3) For a termination notice violation under section 11 of this
 11 chapter, the following:
 12 (A) A warning letter for any violations identified during an
 13 initial inspection.
 14 (B) Fifty dollars (\$50) per instance for each violation
 15 identified in a subsequent inspection.
 16 (C) Seventy-five dollars (\$75) per instance for a third violation
 17 that is identified in a subsequent inspection.
 18 (D) One hundred dollars (\$100) per instance for a fourth or
 19 subsequent violation that:
 20 (i) is identified in an inspection subsequent to the inspection
 21 under clause (C); and
 22 (ii) occurs not more than two (2) years after a prior violation.
 23 (4) For an hour violation of not more than thirty (30) minutes
 24 under section 20 of this chapter, the following:
 25 (A) A warning letter for any violations identified during an
 26 initial inspection.
 27 (B) Fifty dollars (\$50) per instance for each violation
 28 identified in a subsequent inspection.
 29 (C) Seventy-five dollars (\$75) per instance for a third violation
 30 that is identified in a subsequent inspection.
 31 (D) One hundred dollars (\$100) per instance for a fourth or
 32 subsequent violation that:
 33 (i) is identified in an inspection subsequent to the inspection
 34 under clause (C); and
 35 (ii) occurs not more than two (2) years after a prior violation.
 36 (5) For an hour violation of more than thirty (30) minutes under
 37 section 20 of this chapter, the following:
 38 (A) A warning letter for any violations identified during an
 39 initial inspection.
 40 (B) One hundred dollars (\$100) per instance for each violation
 41 identified in a subsequent inspection.
 42 (C) Two hundred dollars (\$200) per instance for a third

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violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 or 25.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

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- 1 (i) is identified in an inspection subsequent to the inspection
 2 under clause (C); and
 3 (ii) occurs not more than two (2) years after a prior violation.
 4 (9) For each violation of section 20.5 of this chapter, the
 5 following:
 6 (A) A warning letter for any violations identified during an
 7 initial inspection.
 8 (B) One hundred dollars (\$100) per instance for each violation
 9 identified in a subsequent inspection.
 10 (C) Two hundred dollars (\$200) per instance for a third
 11 violation that is identified in a subsequent inspection.
 12 (D) Four hundred dollars (\$400) per instance for a fourth or
 13 subsequent violation that:
 14 (i) is identified in an inspection subsequent to the inspection
 15 under clause (C); and
 16 (ii) occurs not more than two (2) years after a prior violation.
 17 (b) A civil penalty assessed under subsection (a):
 18 (1) is subject to IC 4-21.5-3-6; and
 19 (2) becomes effective without a proceeding under IC 4-21.5-3
 20 unless a person requests an administrative review not later than
 21 thirty (30) days after notice of the assessment is given.
 22 (c) For purposes of determining whether a second violation has
 23 occurred when assessing a civil penalty under subsection (a), a first
 24 violation expires one (1) year after the date of issuance of a warning
 25 letter by the department of labor under subsection (a).
 26 (d) For purposes of determining recurring violations of this section,
 27 each location of an employer shall be considered separate and distinct
 28 from another location of the same employer.
 29 (e) There is established an employment of youth fund for the
 30 purpose of educating affected parties on the purposes and contents of
 31 this chapter and the responsibilities of all parties under this chapter.
 32 One-half (1/2) of the fund each year shall be used for the purpose of the
 33 education provision of this subsection. This portion of the fund may be
 34 used to award grants to provide educational programs. The remaining
 35 one-half (1/2) of the fund shall be used each year for the expenses of
 36 hiring and salaries of additional inspectors to enforce this chapter under
 37 section 29 of this chapter. All inspectors hired to enforce this chapter
 38 shall also be available to educate affected parties on the purposes and
 39 contents of this chapter and the responsibilities of all parties under this
 40 chapter. The fund shall be administered by the department of labor.
 41 The expenses of administering the fund shall be paid from money in
 42 the fund. The treasurer of state shall invest the money in the fund not

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currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 2.6 of this chapter.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

- (1) engineers;
- (2) firemen;
- (3) conductors;
- (4) brakemen;
- (5) flagmen;
- (6) baggagemen; or
- (7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(d) When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.



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(e) Except as provided in subsection (f), where the common council has procured worker's compensation insurance under this section, any member of such fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4.

(f) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- (1) members of the Indiana general assembly; and
- (2) field examiners of the state board of accounts.

SECTION 5. IC 22-3-2-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2.6. (a) In addition to section 2 of this chapter, in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for injury or death occurring while:**

- (1) the employee was engaged in the duties of employment at the time of the terrorist attack; or**
- (2) the employee was traveling to or from the place of employment whether or not during working hours, and:**
 - (A) had reached the employer's premises;**
 - (B) had reached the area where the employee parks a motor vehicle; or**
 - (C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.**

(b) Section 2 of this chapter and subsection (a) apply regardless of:

- (1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or**
- (2) whether the terrorist act occurred during the employee's:**
 - (A) lunch; or**



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(B) rest;
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SECTION 6. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2002]: Sec. 8. (a) No compensation is allowed
for an injury or death due to the employee's:

- (1) knowingly self-inflicted injury;
- (2) his intoxication;
- (3) his commission of an offense; his knowing failure to use a safety appliance; or
- (4) his knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work or his knowing failure to perform any statutory duty; **duty, other than duties relating to safety equipment and rules as set forth in subsection (b).**

The burden of proof is on the defendant.

(b) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under IC 22-3-3-8, IC 22-3-3-9, IC 22-3-3-10, IC 22-3-3-21, or IC 22-3-3-22 shall be reduced by fifteen percent (15%) for an injury or a death caused by the employee's intentional:

- (1) failure to use safety equipment furnished by the employer and required by the employer to be used by the employee; or
- (2) failure to obey a written or printed rule of the employer that has been posted in a conspicuous position in the place of work.

(c) The burden of proof is on the defendant.

SECTION 7. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2002]: Sec. 7. (a) Compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work beginning with the eighth (8th) day of such disability except for medical benefits provided in section 4 of the chapter. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(b) The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a



form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to any employment;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable employment under section 11 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowed under section 22 of this chapter; ~~or~~
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury; ~~or~~
- (6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 33 of this**



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chapter.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 8. IC 22-3-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. With respect to injuries occurring prior to April 1, 1951, causing temporary total disability for work, there



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shall be paid to the injured employee during such total disability for work a weekly compensation equal to fifty-five percent (55%) of ~~his~~ **the injured employee's** average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after April 1, 1951, and prior to July 1, 1971, causing temporary total disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of ~~his~~ **the injured employee's** average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, causing temporary total disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of ~~his~~ **the injured employee's** average weekly wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter**, a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of ~~his~~ **the injured employee's** average weekly wages up to one hundred and thirty-five dollars (\$135.00) average weekly wages, as defined in section 22 of this chapter, for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of ~~his~~ **the injured employee's** average weekly wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter**, for a period not to exceed five hundred (500) weeks. **When an employee who has sustained a compensable injury returns to work and suffers a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of the disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in section 22 of this chapter.** Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

SECTION 9. IC 22-3-3-10, AS AMENDED BY P.L.31-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive

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in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred dollars (\$100) average weekly wages, for the periods stated for the injuries. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of his average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not to exceed fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

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1 With respect to injuries in the following schedule occurring on and
 2 after July 1, 1990, and before July 1, 1991, the employee shall receive,
 3 in addition to temporary total disability benefits not exceeding
 4 seventy-eight (78) weeks on account of the injury, a weekly
 5 compensation of sixty percent (60%) of the employee's average weekly
 6 wages, not to exceed two hundred dollars (\$200) average weekly
 7 wages, for the period stated for the injury.

8 (1) Amputation: For the loss by separation of the thumb, sixty
 9 (60) weeks, of the index finger forty (40) weeks, of the second
 10 finger thirty-five (35) weeks, of the third or ring finger thirty (30)
 11 weeks, of the fourth or little finger twenty (20) weeks, of the hand
 12 by separation below the elbow joint two hundred (200) weeks, or
 13 the arm above the elbow two hundred fifty (250) weeks, of the big
 14 toe sixty (60) weeks, of the second toe thirty (30) weeks, of the
 15 third toe twenty (20) weeks, of the fourth toe fifteen (15) weeks,
 16 of the fifth or little toe ten (10) weeks, and for loss occurring
 17 before April 1, 1959, by separation of the foot below the knee
 18 joint one hundred fifty (150) weeks and of the leg above the knee
 19 joint two hundred (200) weeks; for loss occurring on and after
 20 April 1, 1959, by separation of the foot below the knee joint, one
 21 hundred seventy-five (175) weeks and of the leg above the knee
 22 joint two hundred twenty-five (225) weeks. The loss of more than
 23 one (1) phalange of a thumb or toes shall be considered as the loss
 24 of the entire thumb or toe. The loss of more than two (2)
 25 phalanges of a finger shall be considered as the loss of the entire
 26 finger. The loss of not more than one (1) phalange of a thumb or
 27 toe shall be considered as the loss of one-half (1/2) of the thumb
 28 or toe and compensation shall be paid for one-half (1/2) of the
 29 period for the loss of the entire thumb or toe. The loss of not more
 30 than one (1) phalange of a finger shall be considered as the loss
 31 of one-third (1/3) of the finger and compensation shall be paid for
 32 one-third (1/3) the period for the loss of the entire finger. The loss
 33 of more than one (1) phalange of the finger but not more than two
 34 (2) phalanges of the finger, shall be considered as the loss of
 35 one-half (1/2) of the finger and compensation shall be paid for
 36 one-half (1/2) of the period for the loss of the entire finger.

37 (2) For the loss by separation of both hands or both feet or the
 38 total sight of both eyes, or any two (2) such losses in the same
 39 accident, five hundred (500) weeks.

40 (3) For the permanent and complete loss of vision by enucleation
 41 or its reduction to one-tenth (1/10) of normal vision with glasses,
 42 one hundred seventy-five (175) weeks.



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(4) For the permanent and complete loss of hearing in one (1) ear, seventy-five (75) weeks, and in both ears, two hundred (200) weeks.

(5) For the loss of one (1) testicle, fifty (50) weeks; for the loss of both testicles, one hundred fifty (150) weeks.

(b) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in lieu of all other compensation on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to April 1, 1955, the employee shall receive in lieu of all other compensation on account of the injuries a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1955, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such injuries respectively. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not exceeding fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent



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(60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

(1) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid for the same period as for the loss thereof by separation.

(2) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(3) For injuries resulting in total permanent disability, five hundred (500) weeks.

(4) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then in such event compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses, plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(5) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid for a period proportional to the degree

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of such permanent reduction.

(6) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(7) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(c) With respect to injuries in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the injury, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the injury occurred.

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; by separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, and for the loss by separation of any of the body parts described in subdivision (3), (5), or (8), on or after July 1, 1999, the dollar values per degree applying on the date of the injury as described in subsection (d) shall be multiplied by two (2). However, the

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doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation, thirty-five (35) degrees of permanent impairment.

(6) For the reduction of vision to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(7) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(8) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(9) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(10) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.



(11) For injuries resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(12) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(13) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(14) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(15) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(d) Compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the injury determined under subsection (c) and the following:

(1) With respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per

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degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to injuries occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to injuries occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to injuries occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to injuries occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six

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(36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to injuries occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to injuries occurring on and after July 1, 2001, **and before July 1, 2002**, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(9) With respect to injuries occurring on and after July 1, 2002, and before July 1, 2003, for each degree of permanent impairment from one (1) to ten (10), two thousand fifty-six dollars (\$2,056) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand seven hundred six dollars (\$2,706) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred six dollars (\$3,306) per degree; for each degree of permanent impairment above fifty (50), three thousand nine hundred six dollars (\$3,906) per degree.

(10) With respect to injuries occurring on and after July 1, 2003, for each degree of permanent impairment from one (1) to ten (10), two thousand four hundred six dollars (\$2,406) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), three thousand eighty-one dollars (\$3,081) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand seven hundred eighty-one dollars (\$3,781) per degree; for each degree of permanent impairment above fifty (50), four

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thousand five hundred thirty-one dollars (\$4,531) per degree.

(e) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (c) and (d) shall not exceed the following:

(1) With respect to injuries occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to injuries occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to injuries occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to injuries occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to injuries occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to injuries occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to injuries occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to injuries occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, **and before July 1, 2003**, eight hundred eighty-two dollars (\$882).

(11) With respect to injuries occurring on or after July 1, 2003, nine hundred forty-eight dollars (\$948).

SECTION 10. IC 22-3-3-13, AS AMENDED BY P.L.202-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth



1 in subsection (d) that an assessment is necessary to ensure that fund
 2 beneficiaries, including applicants under section 4(e) of this chapter,
 3 continue to receive compensation in a timely manner for a reasonable
 4 prospective period, the board shall send notice not later than October
 5 1 in any year to:

6 (1) all insurance carriers and other entities insuring or providing
 7 coverage to employers who are or may be liable under this article
 8 to pay compensation for personal injuries to or the death of their
 9 employees under this article; and

10 (2) each employer carrying the employer's own risk;

11 stating that an assessment is necessary. After June 30, 1999, the board
 12 may conduct an assessment under this subsection not more than one (1)
 13 time annually. Every insurance carrier and other entity insuring or
 14 providing coverage to employers who are or may be liable under this
 15 article to pay compensation for personal injuries to or death of their
 16 employees under this article and every employer carrying the
 17 employer's own risk, shall, within thirty (30) days of the board sending
 18 notice under this subsection, pay to the worker's compensation board
 19 for the benefit of the fund an assessed amount that may not exceed two
 20 and one-half percent (2.5%) of the total amount of all worker's
 21 compensation paid to injured employees or their beneficiaries under
 22 IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the
 23 due date of such payment. For the purposes of calculating the
 24 assessment under this subsection, the board may consider payments for
 25 temporary total disability, temporary partial disability, permanent total
 26 impairment, permanent partial impairment, or death of an employee.
 27 The board may not consider payments for medical benefits in
 28 calculating an assessment under this subsection. If the amount to the
 29 credit of the second injury fund on or before October 1 of any year
 30 exceeds one million dollars (\$1,000,000), the assessment allowed
 31 under this subsection shall not be assessed or collected during the
 32 ensuing year. But when on or before October 1 of any year the amount
 33 to the credit of the fund is less than one million dollars (\$1,000,000),
 34 the payments of not more than two and one-half percent (2.5%) of the
 35 total amount of all worker's compensation paid to injured employees or
 36 their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar
 37 year next preceding that date shall be resumed and paid into the fund.
 38 The board may not use an assessment rate greater than twenty-five
 39 hundredths of one percent (0.25%) above the amount recommended by
 40 the study performed before the assessment. **All entities liable for and**
 41 **paying an assessment under this subsection are entitled to a credit**
 42 **against the assessment for the payments made the same year on**



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1 which the assessment was based. These payments must have been
 2 made to an employee who was injured before January 1, 2003, and
 3 who had a later period of disability entitling the employee to an
 4 increase in the average weekly wage, as set forth in section 8 of this
 5 chapter. Any credit due shall be computed by the following
 6 formula:

7 **STEP ONE: Determine the amount of compensation the**
 8 **employee actually received based on the average weekly wage**
 9 **as of the last day worked before the later period of disability.**

10 **STEP TWO: Determine the amount of compensation the**
 11 **employee would have received based on the average weekly**
 12 **wage at the time of the original compensable injury.**

13 **STEP THREE: Determine the greater of zero (0) or the result**
 14 **of:**

15 **(A) the STEP ONE amount; minus**

16 **(B) the STEP TWO amount.**

17 (d) The board shall enter into a contract with an actuary or another
 18 qualified firm that has experience in calculating worker's compensation
 19 liabilities. Not later than September 1 of each year, the actuary or other
 20 qualified firm shall calculate the recommended funding level of the
 21 fund based on the previous year's claims and inform the board of the
 22 results of the calculation. If the amount to the credit of the fund is less
 23 than the amount required under subsection (c), the board may conduct
 24 an assessment under subsection (c). The board shall pay the costs of the
 25 contract under this subsection with money in the fund.

26 (e) An assessment collected under subsection (c) on an employer
 27 who is not self-insured must be assessed through a surcharge based on
 28 the employer's premium. An assessment collected under subsection (c)
 29 does not constitute an element of loss, but for the purpose of collection
 30 shall be treated as a separate cost imposed upon insured employers. A
 31 premium surcharge under this subsection must be collected at the same
 32 time and in the same manner in which the premium for coverage is
 33 collected, and must be shown as a separate amount on a premium
 34 statement. A premium surcharge under this subsection must be
 35 excluded from the definition of premium for all purposes, including the
 36 computation of agent commissions or premium taxes. However, an
 37 insurer may cancel a worker's compensation policy for nonpayment of
 38 the premium surcharge. A cancellation under this subsection must be
 39 carried out under the statutes applicable to the nonpayment of
 40 premiums.

41 (f) The sums shall be paid by the board to the treasurer of state, to
 42 be deposited in a special account known as the second injury fund. The



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funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and



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(2) not later than thirty (30) days after a change occurs;
the name, address, and electronic mail address of a representative
authorized to receive the notice of an assessment.

SECTION 11. IC 22-3-3-13, AS AMENDED BY P.L.202-2001,
SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2002]: Sec. 13. (a) As used in this section, "board" refers to
the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of,
one (1) hand; one (1) arm; one (1) foot; one (1) leg; or one (1) eye; and
in a subsequent industrial accident becomes permanently and totally
disabled by reason of the loss; or loss of use of; another such member
or eye; the employer shall be liable only for the compensation payable
for such second injury. However, in addition to such compensation and
after the completion of the payment therefor, the employee shall be
paid the remainder of the compensation that would be due for such
total permanent disability out of a special fund known as the second
injury fund; and created in the manner described in subsection (c):

(c) Whenever the board determines under the procedures set forth
in subsection (d) that an assessment is necessary to ensure that fund
beneficiaries, including applicants under section 4(c) of this chapter,
continue to receive compensation in a timely manner for a reasonable
prospective period, the board shall send notice not later than October
1 in any year to:

(1) all insurance carriers and other entities insuring or providing
coverage to employers who are or may be liable under this article
to pay compensation for personal injuries to or the death of their
employees under this article; and

(2) each employer carrying the employer's own risk;
stating that an assessment is necessary: After June 30, 1999, the board
may conduct an assessment under this subsection not more than one (1)
time annually. Every insurance carrier and other entity insuring or
providing coverage to employers who are or may be liable under this
article to pay compensation for personal injuries to or death of their
employees under this article and every employer carrying the
employer's own risk, shall, within thirty (30) days of the board sending
notice under this subsection, pay to the worker's compensation board
for the benefit of the fund an assessed amount that may not exceed two
and one-half percent (2.5%) of the total amount of all worker's
compensation paid to injured employees or their beneficiaries under
IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the
due date of such payment. For the purposes of calculating the
assessment under this subsection, the board may consider payments for



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temporary total disability; temporary partial disability; permanent total impairment; permanent partial impairment; or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (e). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss; but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected; and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes; including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state; to be deposited in a special account known as the second injury fund. The



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funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section; and shall be paid for that purpose by the treasurer of state upon award or order of the board.

~~(g)~~ (a) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

(1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or

(2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by ~~this section, IC 22-3-4-15~~, as follows under subsection ~~(h)~~: **(b)**.

~~(h)~~ (b) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

~~(i)~~ (c) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

~~(j)~~ All insurance carriers subject to an assessment under this section are required to provide to the board:

~~(1)~~ not later than January 31 each calendar year; and



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1 ~~(2) not later than thirty (30) days after a change occurs;~~
 2 ~~the name, address, and electronic mail address of a representative~~
 3 ~~authorized to receive the notice of an assessment.~~

4 SECTION 12. IC 22-3-3-22, AS AMENDED BY P.L.31-2000,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2002]: Sec. 22. (a) In computing the compensation under this
 7 law with respect to injuries occurring on and after April 1, 1963, and
 8 prior to April 1, 1965, the average weekly wages shall be considered
 9 to be not more than seventy dollars (\$70) nor less than thirty dollars
 10 (\$30). In computing the compensation under this law with respect to
 11 injuries occurring on and after April 1, 1965, and prior to April 1,
 12 1967, the average weekly wages shall be considered to be not more
 13 than seventy-five dollars (\$75) and not less than thirty dollars (\$30). In
 14 computing the compensation under this law with respect to injuries
 15 occurring on and after April 1, 1967, and prior to April 1, 1969, the
 16 average weekly wages shall be considered to be not more than
 17 eighty-five dollars (\$85) and not less than thirty-five dollars (\$35). In
 18 computing the compensation under this law with respect to injuries
 19 occurring on and after April 1, 1969, and prior to July 1, 1971, the
 20 average weekly wages shall be considered to be not more than
 21 ninety-five dollars (\$95) and not less than thirty-five dollars (\$35). In
 22 computing the compensation under this law with respect to injuries
 23 occurring on and after July 1, 1971, and prior to July 1, 1974, the
 24 average weekly wages shall be considered to be: (A) Not more than: (1)
 25 one hundred dollars (\$100) if no dependents; (2) one hundred five
 26 dollars (\$105) if one (1) dependent; (3) one hundred ten dollars (\$110)
 27 if two (2) dependents; (4) one hundred fifteen dollars (\$115) if three
 28 (3) dependents; (5) one hundred twenty dollars (\$120) if four (4)
 29 dependents; and (6) one hundred twenty-five dollars (\$125) if five (5)
 30 or more dependents; and (B) Not less than thirty-five dollars (\$35). In
 31 computing compensation for temporary total disability, temporary
 32 partial disability, and total permanent disability under this law with
 33 respect to injuries occurring on and after July 1, 1974, and before July
 34 1, 1976, the average weekly wages shall be considered to be (A) not
 35 more than one hundred thirty-five dollars (\$135), and (B) not less than
 36 seventy-five dollars (\$75). However, the weekly compensation payable
 37 shall in no case exceed the average weekly wages of the employee at
 38 the time of the injury. In computing compensation for temporary total
 39 disability, temporary partial disability and total permanent disability
 40 under this law with respect to injuries occurring on and after July 1,
 41 1976, and before July 1, 1977, the average weekly wages shall be
 42 considered to be (1) not more than one hundred fifty-six dollars (\$156)

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and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be (1) not more than one hundred eighty dollars (\$180); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable may not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be (1) not more than one hundred ninety-five dollars (\$195), and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be (1) not more than two hundred ten dollars (\$210), and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be (1) not more than two hundred thirty-four dollars (\$234) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1984, and before July 1, 1985, the average weekly wages are considered to be (1) not more than two hundred forty-nine dollars (\$249) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be (1) not more than two

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1 hundred sixty-seven dollars (\$267) and (2) not less than seventy-five
2 dollars (\$75). However, the weekly compensation payable shall not
3 exceed the average weekly wages of the employee at the time of the
4 injury. In computing compensation for temporary total disability,
5 temporary partial disability, and total permanent disability, with respect
6 to injuries occurring on and after July 1, 1986, and before July 1, 1988,
7 the average weekly wages are considered to be (1) not more than two
8 hundred eighty-five dollars (\$285) and (2) not less than seventy-five
9 dollars (\$75). However, the weekly compensation payable shall not
10 exceed the average weekly wages of the employee at the time of the
11 injury. In computing compensation for temporary total disability,
12 temporary partial disability, and total permanent disability, with respect
13 to injuries occurring on and after July 1, 1988, and before July 1, 1989,
14 the average weekly wages are considered to be (1) not more than three
15 hundred eighty-four dollars (\$384) and (2) not less than seventy-five
16 dollars (\$75). However, the weekly compensation payable shall not
17 exceed the average weekly wages of the employee at the time of the
18 injury.

19 In computing compensation for temporary total disability, temporary
20 partial disability, and total permanent disability, with respect to injuries
21 occurring on and after July 1, 1989, and before July 1, 1990, the
22 average weekly wages are considered to be (1) not more than four
23 hundred eleven dollars (\$411) and (2) not less than seventy-five dollars
24 (\$75). However, the weekly compensation payable shall not exceed the
25 average weekly wages of the employee at the time of the injury.

26 In computing compensation for temporary total disability, temporary
27 partial disability, and total permanent disability, with respect to injuries
28 occurring on and after July 1, 1990, and before July 1, 1991, the
29 average weekly wages are considered to be (1) not more than four
30 hundred forty-one dollars (\$441) and (2) not less than seventy-five
31 dollars (\$75). However, the weekly compensation payable shall not
32 exceed the average weekly wages of the employee at the time of the
33 injury.

34 In computing compensation for temporary total disability, temporary
35 partial disability, and total permanent disability, with respect to injuries
36 occurring on and after July 1, 1991, and before July 1, 1992, the
37 average weekly wages are considered to be (1) not more than four
38 hundred ninety-two dollars (\$492) and (2) not less than seventy-five
39 dollars (\$75). However, the weekly compensation payable shall not
40 exceed the average weekly wages of the employee at the time of the
41 injury.

42 In computing compensation for temporary total disability, temporary



partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be (1) not more than five hundred forty dollars (\$540) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be (1) not more than five hundred ninety-one dollars (\$591) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be (1) not more than six hundred forty-two dollars (\$642) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

(1) with respect to injuries occurring on and after July 1, 1997, and before July 1, 1998:

(A) not more than six hundred seventy-two dollars (\$672); and

(B) not less than seventy-five dollars (\$75);

(2) with respect to injuries occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to injuries occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732); and

(B) not less than seventy-five dollars (\$75);

(4) with respect to injuries occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);



(5) with respect to injuries occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822); and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to injuries occurring on and after July 1, 2002, **and before July 1, 2003:**

(A) not more than eight hundred eighty-two dollars (\$882); and

(B) not less than seventy-five dollars (\$75); **and**

(7) with respect to injuries occurring on and after July 1, 2003:

(A) not more than nine hundred forty-eight dollars (\$948); and

(B) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(c) For the purpose of this section only and with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, only, the term "dependent" as used in this section shall mean persons defined as presumptive dependents under section 19 of this chapter, except that such dependency shall be determined as of the date of the injury to the employee.

(d) With respect to any injury occurring on and after April 1, 1955, and prior to April 1, 1957, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provisions of this law or under any combination of its provisions shall not exceed twelve thousand five hundred dollars (\$12,500) in any case. With respect to any injury occurring on and after April 1, 1957, and prior to April 1, 1963, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed fifteen thousand dollars (\$15,000) in any case. With respect to any injury occurring on and after April 1, 1963, and prior to April 1, 1965, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed sixteen thousand five hundred dollars (\$16,500) in any case. With respect to any injury occurring on and after April 1, 1965, and prior to April 1, 1967, the maximum compensation exclusive of medical benefits which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed twenty thousand dollars (\$20,000) in any



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1 case. With respect to any injury occurring on and after April 1, 1967,
 2 and prior to July 1, 1971, the maximum compensation exclusive of
 3 medical benefits which shall be paid for an injury under any provision
 4 of this law or any combination of provisions shall not exceed
 5 twenty-five thousand dollars (\$25,000) in any case. With respect to any
 6 injury occurring on and after July 1, 1971, and prior to July 1, 1974, the
 7 maximum compensation exclusive of medical benefits which shall be
 8 paid for any injury under any provision of this law or any combination
 9 of provisions shall not exceed thirty thousand dollars (\$30,000) in any
 10 case. With respect to any injury occurring on and after July 1, 1974,
 11 and before July 1, 1976, the maximum compensation exclusive of
 12 medical benefits which shall be paid for an injury under any provision
 13 of this law or any combination of provisions shall not exceed forty-five
 14 thousand dollars (\$45,000) in any case. With respect to an injury
 15 occurring on and after July 1, 1976, and before July 1, 1977, the
 16 maximum compensation, exclusive of medical benefits, which shall be
 17 paid for any injury under any provision of this law or any combination
 18 of provisions shall not exceed fifty-two thousand dollars (\$52,000) in
 19 any case. With respect to any injury occurring on and after July 1,
 20 1977, and before July 1, 1979, the maximum compensation, exclusive
 21 of medical benefits, which may be paid for an injury under any
 22 provision of this law or any combination of provisions may not exceed
 23 sixty thousand dollars (\$60,000) in any case. With respect to any injury
 24 occurring on and after July 1, 1979, and before July 1, 1980, the
 25 maximum compensation, exclusive of medical benefits, which may be
 26 paid for an injury under any provisions of this law or any combination
 27 of provisions may not exceed sixty-five thousand dollars (\$65,000) in
 28 any case. With respect to any injury occurring on and after July 1,
 29 1980, and before July 1, 1983, the maximum compensation, exclusive
 30 of medical benefits, which may be paid for an injury under any
 31 provisions of this law or any combination of provisions may not exceed
 32 seventy thousand dollars (\$70,000) in any case. With respect to any
 33 injury occurring on and after July 1, 1983, and before July 1, 1984, the
 34 maximum compensation, exclusive of medical benefits, which may be
 35 paid for an injury under any provisions of this law or any combination
 36 of provisions may not exceed seventy-eight thousand dollars (\$78,000)
 37 in any case. With respect to any injury occurring on and after July 1,
 38 1984, and before July 1, 1985, the maximum compensation, exclusive
 39 of medical benefits, which may be paid for an injury under any
 40 provisions of this law or any combination of provisions may not exceed
 41 eighty-three thousand dollars (\$83,000) in any case. With respect to
 42 any injury occurring on and after July 1, 1985, and before July 1, 1986,

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the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. With respect to any injury occurring on and after July 1, 1986, and before July 1, 1988, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. With respect to any injury occurring on and after July 1, 1988, and before July 1, 1989, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

With respect to any injury occurring on and after July 1, 1989, and before July 1, 1990, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

With respect to any injury occurring on and after July 1, 1990, and before July 1, 1991, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

With respect to any injury occurring on and after July 1, 1991, and before July 1, 1992, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

With respect to any injury occurring on and after July 1, 1992, and before July 1, 1993, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

With respect to any injury occurring on and after July 1, 1993, and before July 1, 1994, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

With respect to any injury occurring on and after July 1, 1994, and before July 1, 1997, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed two hundred

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fourteen thousand dollars (\$214,000) in any case.

(e) The maximum compensation, exclusive of medical benefits, **subject to IC 22-3-2-8**, that may be paid for an injury under any provision of this law or any combination of provisions may not exceed the following amounts in any case:

(1) With respect to an injury occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to an injury occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to an injury occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to an injury occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to an injury occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to an injury occurring on and after July 1, 2002, **and before July 1, 2003**, two hundred ninety-four thousand dollars (\$294,000).

(7) With respect to an injury occurring on or after July 1, 2003, the total of one hundred twenty-five (125) weeks of temporary total disability compensation as set forth in section 8 of this chapter plus one hundred (100) degrees of permanent partial disability as set forth in section 10 of this chapter.

SECTION 13. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 33. (a) If an employee:**

(1) receives an injury that results in a temporary total disability or a temporary partial disability; and

(2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury;

the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade



1 compensation in a weekly amount equal to the amount determined
2 under STEP FOUR of the following formula:

3 STEP ONE: Determine the employee's average weekly
4 earnings from employment with limitations or restrictions
5 that is entered after the employee's injury, if any.

6 STEP TWO: Determine the employee's average weekly
7 earnings from employment before the employee's injury.

8 STEP THREE: Determine the greater of:

- 9 (A) the STEP TWO result minus the STEP ONE result; or
10 (B) zero (0).

11 STEP FOUR: Determine the lesser of:

12 (A) the STEP THREE result; or

13 (B) with respect to injuries occurring on and after:

14 (1) July 1, 2002, and before July 1, 2003, eight hundred
15 eighty-two dollars (\$882); or

16 (2) July 1, 2003, nine hundred forty-eight dollars (\$948).

17 (d) Not later than sixty (60) days after the employee's release to
18 return to work with restrictions or limitations, the employee must
19 receive notice from the employer on a form provided by the board
20 that informs the employee that the employee has been released to
21 work with limitations or restrictions. The notice must include:

22 (1) an explanation of the limitations or restrictions placed on
23 the employee;

24 (2) the amount of disabled from trade compensation the
25 employee has been awarded; and

26 (3) information for the employee regarding the terms of this
27 section.

28 (e) Disabled from trade compensation is in addition to any other
29 compensation awarded to an employee as a result of a temporary
30 total disability or a permanent partial impairment.

31 (f) An employer may unilaterally convert an award of
32 compensation for a temporary total disability or a temporary
33 partial disability into disabled from trade compensation by filing
34 a copy of the notice required under subsection (d) with the board.

35 SECTION 14. IC 22-3-4-10 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. In all proceedings
37 before the worker's compensation board or in a court under IC 22-3-2
38 through IC 22-3-6, the costs shall be awarded and taxed as provided by
39 law in ordinary civil actions in the circuit court. **Prejudgment interest**
40 **shall be awarded at a rate of eight percent (8%) per year accruing**
41 **from the date of filing of the application of adjustment of claim as**
42 **determined under section 5(a) of this chapter.**



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SECTION 15. IC 22-3-4-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 15.(a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.**

(b) If an employee who from any cause:

(1) had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident or exposure becomes permanently and totally disabled by reason of the loss, or loss of, another such member or eye; or

(2) has become impaired from an occupational disease and subsequently has become permanently and totally impaired from a second occupational disease;

the employer shall be liable only for the compensation payable for such second injury or impairment. However, in addition to such compensation and after the completion of the payment, the employee shall be paid the remainder of the compensation that is due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under IC 22-3-3-4(e), continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries or occupational disease to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. The board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries or occupational disease to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount equal to five hundred thousand dollars (\$500,000) plus the recommended funding level under

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1 subsection (d). For purposes of calculating the assessment under
 2 this subsection, the board may consider payments for temporary
 3 total disability, temporary partial disability, permanent total
 4 impairment, permanent partial impairment, or death of an
 5 employee. The board shall not consider payments for medical
 6 benefits in calculating an assessment under this subsection. When
 7 on or before October 1 of any year the amount to the credit of the
 8 fund is less than five hundred thousand dollars (\$500,000) greater
 9 than the recommended funding level under subsection (d), the
 10 board shall assess an amount equal to five hundred thousand
 11 dollars (\$500,000) plus the recommended funding level of the total
 12 amount of all compensation paid to employees or their
 13 beneficiaries under IC 22-3-2 through IC 22-3-7 for the calendar
 14 years preceding that date to be paid into the fund.

15 (d) The board shall enter into a contract with an actuary or
 16 another qualified firm that has experience in calculating worker's
 17 compensation liabilities. The actuary or other qualified firm shall
 18 calculate the recommended funding level of the fund based on the
 19 previous year's claims and inform the board of the results of the
 20 calculation. If the amount to the credit of the fund is less than the
 21 amount required under subsection (c), the board may conduct an
 22 assessment under subsection (c). The board shall pay the costs of
 23 the contract under this subsection with money in the fund.

24 (e) An assessment collected under subsection (c) on an employer
 25 who is not self-insured must be assessed through a surcharge based
 26 on the employer's premium. An assessment collected under
 27 subsection (c) does not constitute an element of loss, but for the
 28 purpose of collection shall be treated as a separate cost imposed
 29 upon insured employers. A premium surcharge under this
 30 subsection must be collected at the same time and in the same
 31 manner in which the premium for coverage is collected, and must
 32 be shown as a separate amount on a premium statement. A
 33 premium surcharge under this subsection must be excluded from
 34 the definition of premium for all purposes, including the
 35 computation of agent commissions or premium taxes. However, an
 36 insurer may cancel a worker's compensation policy for
 37 nonpayment of the premium surcharge. A cancellation under this
 38 subsection must be carried out under the statutes applicable to the
 39 nonpayment of premiums.

40 (f) The sums shall be paid by the board to the treasurer of state,
 41 to be deposited in a special account known as the second injury
 42 fund. The funds are not a part of the general fund of the state. Any



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balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 16. IC 22-3-6-1, AS AMENDED BY P.L.202-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same, using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other

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1 than a municipal corporation or governmental subdivision or a
 2 charitable, religious, educational, or other nonprofit corporation,
 3 is an employee of the corporation under IC 22-3-2 through
 4 IC 22-3-6.

5 (2) An executive officer of a municipal corporation or other
 6 governmental subdivision or of a charitable, religious,
 7 educational, or other nonprofit corporation may, notwithstanding
 8 any other provision of IC 22-3-2 through IC 22-3-6, be brought
 9 within the coverage of its insurance contract by the corporation by
 10 specifically including the executive officer in the contract of
 11 insurance. The election to bring the executive officer within the
 12 coverage shall continue for the period the contract of insurance is
 13 in effect, and during this period, the executive officers thus
 14 brought within the coverage of the insurance contract are
 15 employees of the corporation under IC 22-3-2 through IC 22-3-6.

16 (3) Any reference to an employee who has been injured, when the
 17 employee is dead, also includes the employee's legal
 18 representatives, dependents, and other persons to whom
 19 compensation may be payable.

20 (4) An owner of a sole proprietorship may elect to include the
 21 owner as an employee under IC 22-3-2 through IC 22-3-6 if the
 22 owner is actually engaged in the proprietorship business. If the
 23 owner makes this election, the owner must serve upon the owner's
 24 insurance carrier and upon the board written notice of the
 25 election. No owner of a sole proprietorship may be considered an
 26 employee under IC 22-3-2 through IC 22-3-6 until the notice has
 27 been received. If the owner of a sole proprietorship is an
 28 independent contractor in the construction trades and does not
 29 make the election provided under this subdivision, the owner
 30 must obtain an affidavit of exemption under IC 22-3-2-14.5.

31 (5) A partner in a partnership may elect to include the partner as
 32 an employee under IC 22-3-2 through IC 22-3-6 if the partner is
 33 actually engaged in the partnership business. If a partner makes
 34 this election, the partner must serve upon the partner's insurance
 35 carrier and upon the board written notice of the election. No
 36 partner may be considered an employee under IC 22-3-2 through
 37 IC 22-3-6 until the notice has been received. If a partner in a
 38 partnership is an independent contractor in the construction trades
 39 and does not make the election provided under this subdivision,
 40 the partner must obtain an affidavit of exemption under
 41 IC 22-3-2-14.5.

42 (6) Real estate professionals are not employees under IC 22-3-2

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through IC 22-3-6 if:

(A) they are licensed real estate agents;

(B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

(C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is:

(A) a minor who, at the time of the accident, is employed,

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required, suffered, or permitted to work in violation of
IC 20-8.1-4-25; or

**(B) a child less than eighteen (18) years of age who, at the
time of the accident, is permitted to work in violation of
IC 20-8.1-4-25.5;**

the amount of compensation and death benefits, as provided in
IC 22-3-2 through IC 22-3-6, shall be double the amount which
would otherwise be recoverable. The insurance carrier shall be
liable on its policy for one-half (1/2) of the compensation or
benefits that may be payable on account of the injury or death of
the minor, and the employer shall be liable for the other one-half
(1/2) of the compensation or benefits. If the employee is a minor
who is not less than sixteen (16) years of age and who has not
reached seventeen (17) years of age and who at the time of the
accident is employed, suffered, or permitted to work at any
occupation which is not prohibited by law, this subdivision does
not apply.

(3) A minor employee who, at the time of the accident, is a
student performing services for an employer as part of an
approved program under IC 20-10.1-6-7 shall be considered a
full-time employee for the purpose of computing compensation
for permanent impairment under IC 22-3-3-10. The average
weekly wages for such a student shall be calculated as provided
in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor
under IC 22-3-2 through IC 22-3-6 on account of personal injury
or death by accident shall exclude all rights and remedies of the
minor, the minor's parents, or the minor's personal
representatives, dependents, or next of kin at common law,
statutory or otherwise, on account of the injury or death. This
subsection does not apply to minors who have reached seventeen
(17) years of age.

(d) "Average weekly wages" means the earnings of the injured
employee in the employment in which the employee was working at the
time of the injury during the period of fifty-two (52) weeks
immediately preceding the date of injury, divided by fifty-two (52),
except as follows:

(1) If the injured employee lost seven (7) or more calendar days
during this period, although not in the same week, then the
earnings for the remainder of the fifty-two (52) weeks shall be
divided by the number of weeks and parts thereof remaining after
the time lost has been deducted.



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(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(5) In computing the average weekly wage for an employee who has sustained a compensable injury who has returned to work and has a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of that disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in IC 22-3-3-22.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier

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1 performs such a review.

2 (g) "Billing review standard" means the data used by a billing
3 review service to determine pecuniary liability.

4 (h) "Community" means a geographic service area based on zip
5 code districts defined by the United States Postal Service according to
6 the following groupings:

7 (1) The geographic service area served by zip codes with the first
8 three (3) digits 463 and 464.

9 (2) The geographic service area served by zip codes with the first
10 three (3) digits 465 and 466.

11 (3) The geographic service area served by zip codes with the first
12 three (3) digits 467 and 468.

13 (4) The geographic service area served by zip codes with the first
14 three (3) digits 469 and 479.

15 (5) The geographic service area served by zip codes with the first
16 three (3) digits 460, 461 (except 46107), and 473.

17 (6) The geographic service area served by the 46107 zip code and
18 zip codes with the first three (3) digits 462.

19 (7) The geographic service area served by zip codes with the first
20 three (3) digits 470, 471, 472, 474, and 478.

21 (8) The geographic service area served by zip codes with the first
22 three (3) digits 475, 476, and 477.

23 (i) "Medical service provider" refers to a person or an entity that
24 provides medical services, treatment, or supplies to an employee under
25 IC 22-3-2 through IC 22-3-6.

26 (j) "Pecuniary liability" means the responsibility of an employer or
27 the employer's insurance carrier for the payment of the charges for each
28 specific service or product for human medical treatment provided
29 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
30 less than the charges made by medical service providers at the eightieth
31 percentile in the same community for like services or products.

32 SECTION 17. IC 22-3-7-2 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer
34 and every employee, except as stated in this chapter, shall comply with
35 this chapter, requiring the employer and employee to pay and accept
36 compensation for disablement or death by occupational disease arising
37 out of and in the course of the employment, and shall be bound thereby,
38 **except as provided in section 10(c) of this chapter.**

39 (b) This chapter does not apply to employees of municipal
40 corporations in Indiana who are members of:

41 (1) the fire department or police department of any such
42 municipality; and



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(2) a firefighters' pension fund or a police officers' pension fund. However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

(d) Except as provided in subsection (e), where the common council has procured worker's occupational disease insurance as provided under this section, any member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

(e) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(f) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 18. IC 22-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) **Except as provided in subsection (c)**, as used in this chapter, "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

(b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a

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1 direct causal connection between the conditions under which the work
 2 is performed and the occupational disease, and which can be seen to
 3 have followed as a natural incident of the work as a result of the
 4 exposure occasioned by the nature of the employment, and which can
 5 be fairly traced to the employment as the proximate cause, and which
 6 does not come from a hazard to which workers would have been
 7 equally exposed outside of the employment. The disease must be
 8 incidental to the character of the business and not independent of the
 9 relation of employer and employee. The disease need not have been
 10 foreseen or expected but after its contraction it must appear to have had
 11 its origin in a risk connected with the employment and to have flowed
 12 from that source as a rational consequence.

13 **(c) In addition to subsections (a) and (b), in the event of a**
 14 **terrorist attack (as determined by the worker's compensation**
 15 **board) every employer shall pay and every employee shall accept**
 16 **compensation for occupational disease or death by occupational**
 17 **disease occurring while:**

18 **(1) the employee was engaged in the duties of employment at**
 19 **the time of the terrorist attack; or**

20 **(2) the employee was traveling to or from the place of**
 21 **employment whether or not during working hours, and:**

22 **(A) had reached the employer's premises;**

23 **(B) had reached the area where the employee parks a**
 24 **motor vehicle; or**

25 **(C) was in such close proximity to the place of employment**
 26 **as to be injured or killed as a result of a terrorist attack**
 27 **that directly involved the employer's premises or adjacent**
 28 **areas, including, but not limited to, adjacent travel routes**
 29 **and parking garages.**

30 **(d) Section 2 of this chapter and subsection (a) apply regardless**
 31 **of:**

32 **(1) whether the employee's activities were a benefit to the**
 33 **employer at the time of the terrorist attack; or**

34 **(2) whether the terrorist act occurred during the employee's:**

35 **(A) lunch; or**

36 **(B) rest;**

37 **period.**

38 SECTION 19. IC 22-3-7-16, AS AMENDED BY P.L.1-2001,
 39 SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2002]: Sec. 16. (a) Compensation shall be allowed on account
 41 of disablement from occupational disease resulting in only temporary
 42 total disability to work or temporary partial disability to work



beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to work;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 20 of this chapter;
- (4) the employee has received five hundred (500) weeks of



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temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; ~~or~~

(5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease; ~~or~~

(6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 16.5 of this chapter.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted

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1 from any benefits due the employee under this section and, if there are
 2 no benefits due the employee or the benefits due the employee do not
 3 equal the amount of the overpayment, the employee shall be
 4 responsible for paying any overpayment which cannot be deducted
 5 from benefits due the employee.

6 (e) For disablements occurring on and after April 1, 1951, and prior
 7 to July 1, 1971, from occupational disease resulting in temporary total
 8 disability for any work there shall be paid to the disabled employee
 9 during such temporary total disability a weekly compensation equal to
 10 sixty percent (60%) of the employee's average weekly wages for a
 11 period not to exceed five hundred (500) weeks. Compensation shall be
 12 allowed for the first seven (7) calendar days only if the disability
 13 continues for longer than twenty-eight (28) days.

14 For disablements occurring on and after July 1, 1971, and prior to
 15 July 1, 1974, from occupational disease resulting in temporary total
 16 disability for any work there shall be paid to the disabled employee
 17 during such temporary total disability a weekly compensation equal to
 18 sixty percent (60%) of the employee's average weekly wages, as
 19 defined in section 19 of this chapter, for a period not to exceed five
 20 hundred (500) weeks. Compensation shall be allowed for the first seven
 21 (7) calendar days only if the disability continues for longer than
 22 twenty-eight (28) days.

23 For disablements occurring on and after July 1, 1974, and before
 24 July 1, 1976, from occupational disease resulting in temporary total
 25 disability for any work there shall be paid to the disabled employee
 26 during such temporary total disability a weekly compensation equal to
 27 sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the employee's average
 28 weekly wages, up to one hundred thirty-five dollars (\$135) average
 29 weekly wages, as defined in section 19 of this chapter, for a period not
 30 to exceed five hundred (500) weeks. Compensation shall be allowed for
 31 the first seven (7) calendar days only if the disability continues for
 32 longer than twenty-one (21) days.

33 For disablements occurring on and after July 1, 1976, from
 34 occupational disease resulting in temporary total disability for any work
 35 there shall be paid to the disabled employee during the temporary total
 36 disability weekly compensation equal to sixty-six and two-thirds
 37 percent ($66 \frac{2}{3}\%$) of the employee's average weekly wages, as defined
 38 in section 19 of this chapter, for a period not to exceed five hundred
 39 (500) weeks. Compensation shall be allowed for the first seven (7)
 40 calendar days only if the disability continues for longer than twenty-one
 41 (21) days.

42 (f) For disablements occurring on and after April 1, 1951, and prior

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1 to July 1, 1971, from occupational disease resulting in temporary
 2 partial disability for work there shall be paid to the disabled employee
 3 during such disability a weekly compensation equal to sixty percent
 4 (60%) of the difference between the employee's average weekly wages
 5 and the weekly wages at which the employee is actually employed after
 6 the disablement, for a period not to exceed three hundred (300) weeks.
 7 Compensation shall be allowed for the first seven (7) calendar days
 8 only if the disability continues for longer than twenty-eight (28) days.
 9 In case of partial disability after the period of temporary total disability,
 10 the later period shall be included as part of the maximum period
 11 allowed for partial disability.

12 For disablements occurring on and after July 1, 1971, and prior to
 13 July 1, 1974, from occupational disease resulting in temporary partial
 14 disability for work there shall be paid to the disabled employee during
 15 such disability a weekly compensation equal to sixty percent (60%) of
 16 the difference between the employee's average weekly wages, as
 17 defined in section 19 of this chapter, and the weekly wages at which the
 18 employee is actually employed after the disablement, for a period not
 19 to exceed three hundred (300) weeks. Compensation shall be allowed
 20 for the first seven (7) calendar days only if the disability continues for
 21 longer than twenty-eight (28) days. In case of partial disability after the
 22 period of temporary total disability, the latter period shall be included
 23 as a part of the maximum period allowed for partial disability.

24 For disablements occurring on and after July 1, 1974, from
 25 occupational disease resulting in temporary partial disability for work
 26 there shall be paid to the disabled employee during such disability a
 27 weekly compensation equal to sixty-six and two-thirds percent (66
 28 $\frac{2}{3}$ %) of the difference between the employee's average weekly wages,
 29 as defined in section 19 of this chapter, and the weekly wages at which
 30 ~~he~~ **the employee** is actually employed after the disablement, for a
 31 period not to exceed three hundred (300) weeks. Compensation shall
 32 be allowed for the first seven (7) calendar days only if the disability
 33 continues for longer than twenty-one (21) days. In case of partial
 34 disability after the period of temporary total disability, the latter period
 35 shall be included as a part of the maximum period allowed for partial
 36 disability.

37 (g) For disabilities occurring on and after April 1, 1951, and prior
 38 to April 1, 1955, from occupational disease in the following schedule,
 39 the employee shall receive in lieu of all other compensation, on account
 40 of such disabilities, a weekly compensation of sixty percent (60%) of
 41 the employee's average weekly wage; for disabilities occurring on and
 42 after April 1, 1955, and prior to July 1, 1971, from occupational disease

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1 in the following schedule, the employee shall receive in addition to
 2 disability benefits not exceeding twenty-six (26) weeks on account of
 3 said occupational disease a weekly compensation of sixty percent
 4 (60%) of the employee's average weekly wages.

5 For disabilities occurring on and after July 1, 1971, and before July
 6 1, 1977, from occupational disease in the following schedule, the
 7 employee shall receive in addition to disability benefits not exceeding
 8 twenty-six (26) weeks on account of said occupational disease a weekly
 9 compensation of sixty percent (60%) of ~~his~~ **the employee's** average
 10 weekly wages not to exceed one hundred dollars (\$100) average weekly
 11 wages, for the period stated for such disabilities respectively.

12 For disabilities occurring on and after July 1, 1977, and before July
 13 1, 1979, from occupational disease in the following schedule, the
 14 employee shall receive in addition to disability benefits not exceeding
 15 twenty-six (26) weeks on account of the occupational disease a weekly
 16 compensation of sixty percent (60%) of the employee's average weekly
 17 wages, not to exceed one hundred twenty-five dollars (\$125) average
 18 weekly wages, for the period stated for the disabilities.

19 For disabilities occurring on and after July 1, 1979, and before July
 20 1, 1988, from occupational disease in the following schedule, the
 21 employee shall receive in addition to disability benefits, not exceeding
 22 fifty-two (52) weeks on account of the occupational disease, a weekly
 23 compensation of sixty percent (60%) of the employee's average weekly
 24 wages, not to exceed one hundred twenty-five dollars (\$125) average
 25 weekly wages, for the period stated for the disabilities.

26 For disabilities occurring on and after July 1, 1988, and before July
 27 1, 1989, from occupational disease in the following schedule, the
 28 employee shall receive in addition to disability benefits, not exceeding
 29 seventy-eight (78) weeks on account of the occupational disease, a
 30 weekly compensation of sixty percent (60%) of the employee's average
 31 weekly wages, not to exceed one hundred sixty-six dollars (\$166)
 32 average weekly wages, for the period stated for the disabilities.

33 For disabilities occurring on and after July 1, 1989, and before July
 34 1, 1990, from occupational disease in the following schedule, the
 35 employee shall receive in addition to disability benefits, not exceeding
 36 seventy-eight (78) weeks on account of the occupational disease, a
 37 weekly compensation of sixty percent (60%) of the employee's average
 38 weekly wages, not to exceed one hundred eighty-three dollars (\$183)
 39 average weekly wages, for the period stated for the disabilities.

40 For disabilities occurring on and after July 1, 1990, and before July
 41 1, 1991, from occupational disease in the following schedule, the
 42 employee shall receive in addition to disability benefits, not exceeding

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seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half (1/2) the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with

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1 glasses, one hundred fifty (150) weeks, and for any other
 2 permanent reduction of the sight of an eye, compensation shall be
 3 paid for a period proportionate to the degree of such permanent
 4 reduction without correction or glasses. However, when such
 5 permanent reduction without correction or glasses would result in
 6 one hundred percent (100%) loss of vision, but correction or
 7 glasses would result in restoration of vision, then compensation
 8 shall be paid for fifty percent (50%) of such total loss of vision
 9 without glasses plus an additional amount equal to the
 10 proportionate amount of such reduction with glasses, not to
 11 exceed an additional fifty percent (50%).

12 (7) For the permanent and complete loss of hearing, two hundred
 13 (200) weeks.

14 (8) In all other cases of permanent partial impairment,
 15 compensation proportionate to the degree of such permanent
 16 partial impairment, in the discretion of the worker's compensation
 17 board, not exceeding five hundred (500) weeks.

18 (9) In all cases of permanent disfigurement, which may impair the
 19 future usefulness or opportunities of the employee, compensation
 20 in the discretion of the worker's compensation board, not
 21 exceeding two hundred (200) weeks, except that no compensation
 22 shall be payable under this paragraph where compensation shall
 23 be payable under subdivisions (1) through (8). Where
 24 compensation for temporary total disability has been paid, this
 25 amount of compensation shall be deducted from any
 26 compensation due for permanent disfigurement.

27 With respect to disablements in the following schedule occurring on
 28 and after July 1, 1991, the employee shall receive in addition to
 29 temporary total disability benefits, not exceeding one hundred
 30 twenty-five (125) weeks on account of the disablement, compensation
 31 in an amount determined under the following schedule to be paid
 32 weekly at a rate of sixty-six and two-thirds percent ($66 \frac{2}{3}\%$) of the
 33 employee's average weekly wages during the fifty-two (52) weeks
 34 immediately preceding the week in which the disablement occurred:

35 (1) Amputation: For the loss by separation of the thumb, twelve
 36 (12) degrees of permanent impairment; of the index finger, eight
 37 (8) degrees of permanent impairment; of the second finger, seven
 38 (7) degrees of permanent impairment; of the third or ring finger,
 39 six (6) degrees of permanent impairment; of the fourth or little
 40 finger, four (4) degrees of permanent impairment; of the hand by
 41 separation below the elbow joint, forty (40) degrees of permanent
 42 impairment; of the arm above the elbow, fifty (50) degrees of



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permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection (h) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of

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permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(h) With respect to disablements occurring on and after July 1,



1 1991, compensation for permanent partial impairment shall be paid
 2 according to the degree of permanent impairment for the disablement
 3 determined under subsection (d) and the following:

4 (1) With respect to disablements occurring on and after July 1,
 5 1991, and before July 1, 1992, for each degree of permanent
 6 impairment from one (1) to thirty-five (35), five hundred dollars
 7 (\$500) per degree; for each degree of permanent impairment from
 8 thirty-six (36) to fifty (50), nine hundred dollars (\$900) per
 9 degree; for each degree of permanent impairment above fifty (50),
 10 one thousand five hundred dollars (\$1,500) per degree.

11 (2) With respect to disablements occurring on and after July 1,
 12 1992, and before July 1, 1993, for each degree of permanent
 13 impairment from one (1) to twenty (20), five hundred dollars
 14 (\$500) per degree; for each degree of permanent impairment from
 15 twenty-one (21) to thirty-five (35), eight hundred dollars (\$800)
 16 per degree; for each degree of permanent impairment from
 17 thirty-six (36) to fifty (50), one thousand three hundred dollars
 18 (\$1,300) per degree; for each degree of permanent impairment
 19 above fifty (50), one thousand seven hundred dollars (\$1,700) per
 20 degree.

21 (3) With respect to disablements occurring on and after July 1,
 22 1993, and before July 1, 1997, for each degree of permanent
 23 impairment from one (1) to ten (10), five hundred dollars (\$500)
 24 per degree; for each degree of permanent impairment from eleven
 25 (11) to twenty (20), seven hundred dollars (\$700) per degree; for
 26 each degree of permanent impairment from twenty-one (21) to
 27 thirty-five (35), one thousand dollars (\$1,000) per degree; for
 28 each degree of permanent impairment from thirty-six (36) to fifty
 29 (50), one thousand four hundred dollars (\$1,400) per degree; for
 30 each degree of permanent impairment above fifty (50), one
 31 thousand seven hundred dollars (\$1,700) per degree.

32 (4) With respect to disablements occurring on and after July 1,
 33 1997, and before July 1, 1998, for each degree of permanent
 34 impairment from one (1) to ten (10), seven hundred fifty dollars
 35 (\$750) per degree; for each degree of permanent impairment from
 36 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per
 37 degree; for each degree of permanent impairment from thirty-six
 38 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per
 39 degree; for each degree of permanent impairment above fifty (50),
 40 one thousand seven hundred dollars (\$1,700) per degree.

41 (5) With respect to disablements occurring on and after July 1,
 42 1998, and before July 1, 1999, for each degree of permanent

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1 impairment from one (1) to ten (10), seven hundred fifty dollars
 2 (\$750) per degree; for each degree of permanent impairment from
 3 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per
 4 degree; for each degree of permanent impairment from thirty-six
 5 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per
 6 degree; for each degree of permanent impairment above fifty (50),
 7 one thousand seven hundred dollars (\$1,700) per degree.

8 (6) With respect to disablements occurring on and after July 1,
 9 1999, and before July 1, 2000, for each degree of permanent
 10 impairment from one (1) to ten (10), nine hundred dollars (\$900)
 11 per degree; for each degree of permanent impairment from eleven
 12 (11) to thirty-five (35), one thousand one hundred dollars
 13 (\$1,100) per degree; for each degree of permanent impairment
 14 from thirty-six (36) to fifty (50), one thousand six hundred dollars
 15 (\$1,600) per degree; for each degree of permanent impairment
 16 above fifty (50), two thousand dollars (\$2,000) per degree.

17 (7) With respect to disablements occurring on and after July 1,
 18 2000, and before July 1, 2001, for each degree of permanent
 19 impairment from one (1) to ten (10), one thousand one hundred
 20 dollars (\$1,100) per degree; for each degree of permanent
 21 impairment from eleven (11) to thirty-five (35), one thousand
 22 three hundred dollars (\$1,300) per degree; for each degree of
 23 permanent impairment from thirty-six (36) to fifty (50), two
 24 thousand dollars (\$2,000) per degree; for each degree of
 25 permanent impairment above fifty (50), two thousand five
 26 hundred fifty dollars (\$2,500) per degree.

27 (8) With respect to disablements occurring on and after July 1,
 28 2001, **and before July 1, 2002**, for each degree of permanent
 29 impairment from one (1) to ten (10), one thousand three hundred
 30 dollars (\$1,300) per degree; for each degree of permanent
 31 impairment from eleven (11) to thirty-five (35), one thousand five
 32 hundred dollars (\$1,500) per degree; for each degree of
 33 permanent impairment from thirty-six (36) to fifty (50), two
 34 thousand four hundred dollars (\$2,400) per degree; for each
 35 degree of permanent impairment above fifty (50), three thousand
 36 dollars (\$3,000) per degree.

37 **(9) With respect to disablements occurring on and after July**
 38 **1, 2002, and before July 1, 2003, for each degree of permanent**
 39 **impairment from one (1) to ten (10), two thousand fifty-six**
 40 **dollars (\$2,056) per degree; for each degree of permanent**
 41 **impairment from eleven (11) to thirty-five (35), two thousand**
 42 **seven hundred six dollars (\$2,706) per degree; for each degree**

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1 of permanent impairment from thirty-six (36) to fifty (50),
 2 three thousand three hundred six dollars (\$3,306) per degree;
 3 for each degree of permanent impairment above fifty (50),
 4 three thousand nine hundred six dollars (\$3,906) per degree.
 5 (10) With respect to disablements occurring on and after July
 6 1, 2003, for each degree of permanent impairment from one
 7 (1) to ten (10), two thousand four hundred six dollars (\$2,406)
 8 per degree; for each degree of permanent impairment from
 9 eleven (11) to thirty-five (35), three thousand eighty-one
 10 dollars (\$3,081) per degree; for each degree of permanent
 11 impairment from thirty-six (36) to fifty (50), three thousand
 12 seven hundred eighty-one dollars (\$3,781) per degree; for
 13 each degree of permanent impairment above fifty (50), four
 14 thousand five hundred thirty-one dollars (\$4,531) per degree.

15 (i) The average weekly wages used in the determination of
 16 compensation for permanent partial impairment under subsections (g)
 17 and (h) shall not exceed the following:

18 (1) With respect to disablements occurring on or after July 1,
 19 1991, and before July 1, 1992, four hundred ninety-two dollars
 20 (\$492).

21 (2) With respect to disablements occurring on or after July 1,
 22 1992, and before July 1, 1993, five hundred forty dollars (\$540).

23 (3) With respect to disablements occurring on or after July 1,
 24 1993, and before July 1, 1994, five hundred ninety-one dollars
 25 (\$591).

26 (4) With respect to disablements occurring on or after July 1,
 27 1994, and before July 1, 1997, six hundred forty-two dollars
 28 (\$642).

29 (5) With respect to disablements occurring on or after July 1,
 30 1997, and before July 1, 1998, six hundred seventy-two dollars
 31 (\$672).

32 (6) With respect to disablements occurring on or after July 1,
 33 1998, and before July 1, 1999, seven hundred two dollars (\$702).

34 (7) With respect to disablements occurring on or after July 1,
 35 1999, and before July 1, 2000, seven hundred thirty-two dollars
 36 (\$732).

37 (8) With respect to disablements occurring on or after July 1,
 38 2000, and before July 1, 2001, seven hundred sixty-two dollars
 39 (\$762).

40 (9) With respect to ~~injuries~~ **disablements** occurring on or after
 41 July 1, 2001, and before July 1, 2002, eight hundred twenty-two
 42 dollars (\$822).



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(10) With respect to ~~injuries~~ **disablements** occurring on or after July 1, 2002, **and before July 1, 2003**, eight hundred eighty-two dollars (\$882).

(11) With respect to disablements occurring on or after July 1, 2003, nine hundred forty-eight dollars (\$948).

(j) If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity ~~procured for him; he the~~ **employee** shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(k) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he the employee~~ suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(l) If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, ~~he the~~ **employee** shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (g)(1), (g)(4), (g)(5), (g)(8), or (g)(9); but the employee



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1 shall be entitled to compensation for that disability and from the time
 2 of that disability which will cover the longest period and the largest
 3 amount payable under this chapter.

4 (m) If an employee receives a permanent disability from
 5 occupational disease such as specified in subsection (g)(1), (g)(4),
 6 (g)(5), (g)(8), or (g)(9) after having sustained another such permanent
 7 disability in the same employment the employee shall be entitled to
 8 compensation for both such disabilities, but the total compensation
 9 shall be paid by extending the period and not by increasing the amount
 10 of weekly compensation and, when such previous and subsequent
 11 permanent disabilities, in combination result in total permanent
 12 disability or permanent total impairment, compensation shall be
 13 payable for such permanent total disability or impairment, but
 14 payments made for the previous disability or impairment shall be
 15 deducted from the total payment of compensation due.

16 (n) When an employee has been awarded or is entitled to an award
 17 of compensation for a definite period under this chapter for disability
 18 from occupational disease, which disablement occurs on and after April
 19 1, 1951, and prior to April 1, 1963, and such employee dies from any
 20 other cause than such occupational disease, payment of the unpaid
 21 balance of such compensation, not exceeding three hundred (300)
 22 weeks, shall be made to the employee's dependents of the second and
 23 third class as defined in sections 11 through 14 of this chapter, and
 24 compensation, not exceeding five hundred (500) weeks, shall be made
 25 to the employee's dependents of the first class as defined in sections 11
 26 through 14 of this chapter. When an employee has been awarded or is
 27 entitled to an award of compensation for a definite period from an
 28 occupational disease wherein disablement occurs on and after April 1,
 29 1963, and such employee dies from other causes than such
 30 occupational disease, payment of the unpaid balance of such
 31 compensation not exceeding three hundred fifty (350) weeks shall be
 32 paid to the employee's dependents of the second and third class as
 33 defined in sections 11 through 14 of this chapter and compensation, not
 34 exceeding five hundred (500) weeks shall be made to the employee's
 35 dependents of the first class as defined in sections 11 through 14 of this
 36 chapter.

37 (o) Any payment made by the employer to the employee during the
 38 period of the employee's disability, or to the employee's dependents,
 39 which, by the terms of this chapter, was not due and payable when
 40 made, may, subject to the approval of the worker's compensation board,
 41 be deducted from the amount to be paid as compensation, but such
 42 deduction shall be made from the distal end of the period during which



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1 compensation must be paid, except in cases of temporary disability.

2 (p) When so provided in the compensation agreement or in the
3 award of the worker's compensation board, compensation may be paid
4 semimonthly, or monthly, instead of weekly.

5 (q) When the aggregate payments of compensation awarded by
6 agreement or upon hearing to an employee or dependent under eighteen
7 (18) years of age do not exceed one hundred dollars (\$100), the
8 payment thereof may be made directly to such employee or dependent,
9 except when the worker's compensation board shall order otherwise.

10 Whenever the aggregate payments of compensation, due to any
11 person under eighteen (18) years of age, exceed one hundred dollars
12 (\$100), the payment thereof shall be made to a trustee, appointed by the
13 circuit or superior court, or to a duly qualified guardian, or, upon the
14 order of the worker's compensation board, to a parent or to such minor
15 person. The payment of compensation, due to any person eighteen (18)
16 years of age or over, may be made directly to such person.

17 (r) If an employee, or a dependent, is mentally incompetent, or a
18 minor at the time when any right or privilege accrues to the employee
19 under this chapter, the employee's guardian or trustee may, in the
20 employee's behalf, claim and exercise such right and privilege.

21 (s) All compensation payments named and provided for in this
22 section, shall mean and be defined to be for only such occupational
23 diseases and disabilities therefrom as are proved by competent
24 evidence, of which there are or have been objective conditions or
25 symptoms proven, not within the physical or mental control of the
26 employee himself.

27 SECTION 20. IC 22-3-7-16.1 IS ADDED TO THE INDIANA
28 CODE AS A NEW SECTION TO READ AS FOLLOWS
29 [EFFECTIVE JULY 1, 2002]: **Sec. 16.1. (a) On or after January 1,**
30 **2003, if an employee who is entitled to compensation under this**
31 **chapter either:**

32 **(1) exhausts the maximum benefits under this chapter without**
33 **having received the full amount of award granted to the**
34 **employee under this chapter; or**

35 **(2) exhausts the employee's benefits under this chapter;**
36 **then the employee may apply to the worker's compensation board,**
37 **who may award the employee compensation from the second**
38 **injury fund under IC 22-3-4-15, subject to subsection (b).**

39 **(b) An employee who has exhausted the employee's maximum**
40 **benefits under this chapter may be awarded additional**
41 **compensation equal to sixty-six and two-thirds percent (66 2/3%)**
42 **of the employee's average weekly wage at the time of the**

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employee's disablement from occupational disease, not to exceed the maximum applicable under this chapter for a period not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from an occupational disease of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(c) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the worker's compensation board for successive periods not to exceed one hundred fifty (150) weeks each.

SECTION 21. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16.5. (a) If an employee:

(1) suffers an occupational disease that results in a temporary total disability or a temporary partial disability; and

(2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's occupational disease;

the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to the amount determined under STEP FOUR of the following formula:

STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's occupational disease, if any.

STEP TWO: Determine the employee's average weekly earnings from employment before the employee's occupational disease.

STEP THREE: Determine the greater of:

(A) the STEP TWO result minus the STEP ONE result; or

(B) zero (0).



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STEP FOUR: Determine the lesser of:

(A) the STEP THREE result; or

(B) with respect to occupational diseases occurring on and after:

(1) July 1, 2002, and before July 1, 2003, eight hundred eighty-two dollars (\$882); or

(2) July 1, 2003, nine hundred forty-eight dollars (\$948).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

(1) an explanation of the limitations or restrictions placed on the employee;

(2) the amount of disabled from trade compensation the employee has been awarded; and

(3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

SECTION 22. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to occupational diseases occurring:

(1) on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be:

(A) not more than one hundred thirty-five dollars (\$135); and

(B) not less than seventy-five dollars (\$75);

(2) on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be:

(A) not more than one hundred fifty-six dollars (\$156); and

(B) not less than seventy-five dollars (\$75);

(3) on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be:

(A) not more than one hundred eighty dollars (\$180); and



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- 1 (B) not less than seventy-five dollars (\$75);
 2 (4) on and after July 1, 1979, and before July 1, 1980, the average
 3 weekly wages are considered to be:
 4 (A) not more than one hundred ninety-five dollars (\$195); and
 5 (B) not less than seventy-five dollars (\$75);
 6 (5) on and after July 1, 1980, and before July 1, 1983, the average
 7 weekly wages are considered to be:
 8 (A) not more than two hundred ten dollars (\$210); and
 9 (B) not less than seventy-five dollars (\$75);
 10 (6) on and after July 1, 1983, and before July 1, 1984, the average
 11 weekly wages are considered to be:
 12 (A) not more than two hundred thirty-four dollars (\$234); and
 13 (B) not less than seventy-five dollars (\$75); and
 14 (7) on and after July 1, 1984, and before July 1, 1985, the average
 15 weekly wages are considered to be:
 16 (A) not more than two hundred forty-nine dollars (\$249); and
 17 (B) not less than seventy-five dollars (\$75).
 18 (b) In computing compensation for temporary total disability,
 19 temporary partial disability, and total permanent disability, with respect
 20 to occupational diseases occurring on and after July 1, 1985, and before
 21 July 1, 1986, the average weekly wages are considered to be:
 22 (1) not more than two hundred sixty-seven dollars (\$267); and
 23 (2) not less than seventy-five dollars (\$75).
 24 (c) In computing compensation for temporary total disability,
 25 temporary partial disability, and total permanent disability, with respect
 26 to occupational diseases occurring on and after July 1, 1986, and before
 27 July 1, 1988, the average weekly wages are considered to be:
 28 (1) not more than two hundred eighty-five dollars (\$285); and
 29 (2) not less than seventy-five dollars (\$75).
 30 (d) In computing compensation for temporary total disability,
 31 temporary partial disability, and total permanent disability, with respect
 32 to occupational diseases occurring on and after July 1, 1988, and before
 33 July 1, 1989, the average weekly wages are considered to be:
 34 (1) not more than three hundred eighty-four dollars (\$384); and
 35 (2) not less than seventy-five dollars (\$75).
 36 (e) In computing compensation for temporary total disability,
 37 temporary partial disability, and total permanent disability, with respect
 38 to occupational diseases occurring on and after July 1, 1989, and before
 39 July 1, 1990, the average weekly wages are considered to be:
 40 (1) not more than four hundred eleven dollars (\$411); and
 41 (2) not less than seventy-five dollars (\$75).
 42 (f) In computing compensation for temporary total disability,



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temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

(j) In computing compensation for temporary total disability, temporary partial disability and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

(k) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:
 - (A) not more than six hundred seventy-two dollars (\$672); and
 - (B) not less than seventy-five dollars (\$75);
- (2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:
 - (A) not more than seven hundred two dollars (\$702); and
 - (B) not less than seventy-five dollars (\$75);
- (3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:



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(A) not more than seven hundred thirty-two dollars (\$732);
and

(B) not less than seventy-five dollars (\$75);

(4) with respect to occupational diseases occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to ~~disablements~~ **occupational diseases** occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822);

and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to ~~disablements~~ **occupational diseases** occurring on and after July 1, 2002, **and before July 1, 2003:**

(A) not more than eight hundred eighty-two dollars (\$882);

and

(B) not less than seventy-five dollars (\$75); **and**

(7) with respect to occupational diseases occurring on and after July 1, 2003:

(A) not more than nine hundred forty-eight dollars (\$948);

and

(B) not less than seventy-five dollars (\$75).

(l) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:

(1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;

(2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;

(3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;

(4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;

(5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;

(6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and

(7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which shall be paid for occupational disease and the results thereof under the

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1 provisions of this chapter or under any combination of its provisions
2 may not exceed eighty-nine thousand dollars (\$89,000) in any case.
3 The maximum compensation with respect to disability or death
4 occurring on and after July 1, 1986, and before July 1, 1988, which
5 shall be paid for occupational disease and the results thereof under the
6 provisions of this chapter or under any combination of its provisions
7 may not exceed ninety-five thousand dollars (\$95,000) in any case. The
8 maximum compensation with respect to disability or death occurring
9 on and after July 1, 1988, and before July 1, 1989, that shall be paid for
10 occupational disease and the results thereof under this chapter or under
11 any combination of its provisions may not exceed one hundred
12 twenty-eight thousand dollars (\$128,000) in any case.

13 (n) The maximum compensation with respect to disability or death
14 occurring on and after July 1, 1989, and before July 1, 1990, that shall
15 be paid for occupational disease and the results thereof under this
16 chapter or under any combination of its provisions may not exceed one
17 hundred thirty-seven thousand dollars (\$137,000) in any case.

18 (o) The maximum compensation with respect to disability or death
19 occurring on and after July 1, 1990, and before July 1, 1991, that shall
20 be paid for occupational disease and the results thereof under this
21 chapter or under any combination of its provisions may not exceed one
22 hundred forty-seven thousand dollars (\$147,000) in any case.

23 (p) The maximum compensation with respect to disability or death
24 occurring on and after July 1, 1991, and before July 1, 1992, that shall
25 be paid for occupational disease and the results thereof under this
26 chapter or under any combination of the provisions of this chapter may
27 not exceed one hundred sixty-four thousand dollars (\$164,000) in any
28 case.

29 (q) The maximum compensation with respect to disability or death
30 occurring on and after July 1, 1992, and before July 1, 1993, that shall
31 be paid for occupational disease and the results thereof under this
32 chapter or under any combination of the provisions of this chapter may
33 not exceed one hundred eighty thousand dollars (\$180,000) in any case.

34 (r) The maximum compensation with respect to disability or death
35 occurring on and after July 1, 1993, and before July 1, 1994, that shall
36 be paid for occupational disease and the results thereof under this
37 chapter or under any combination of the provisions of this chapter may
38 not exceed one hundred ninety-seven thousand dollars (\$197,000) in
39 any case.

40 (s) The maximum compensation with respect to disability or death
41 occurring on and after July 1, 1994, and before July 1, 1997, that shall
42 be paid for occupational disease and the results thereof under this

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chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter, **subject to section 21 of this chapter**, may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, **and before July 1, 2003**, two hundred ninety-four thousand dollars (\$294,000).

(7) With respect to a disability or death occurring on or after July 1, 2003, the total of one hundred twenty-five (125) weeks of temporary total disability compensation plus one hundred (100) degrees of permanent partial impairment, both as set forth in section 16 of this chapter.

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the



1 earnings during that period by the number of weeks and parts thereof
 2 during which the employee earned wages shall be followed if results
 3 just and fair to both parties will be obtained. Where by reason of the
 4 shortness of the time during which the employee has been in the
 5 employment of the employer or of the casual nature or terms of the
 6 employment it is impracticable to compute the average weekly wages
 7 as above defined, regard shall be had to the average weekly amount
 8 which, during the fifty-two (52) weeks previous to the last day of the
 9 last exposure, was being earned by a person in the same grade
 10 employed at the same work by the same employer, or if there is no
 11 person so employed, by a person in the same grade employed in that
 12 same class of employment in the same district. Whenever allowances
 13 of any character are made to an employee in lieu of wages or a
 14 specified part of the wage contract, they shall be deemed a part of the
 15 employee's earnings.

16 (v) For all disabilities occurring on and after July 1, 1985, "average
 17 weekly wages" means the earnings of the injured employee during the
 18 period of fifty-two (52) weeks immediately preceding the disability
 19 divided by fifty-two (52). If the employee lost seven (7) or more
 20 calendar days during the period, although not in the same week, then
 21 the earnings for the remainder of the fifty-two (52) weeks shall be
 22 divided by the number of weeks and parts of weeks remaining after the
 23 time lost has been deducted. If employment before the date of disability
 24 extended over a period of less than fifty-two (52) weeks, the method of
 25 dividing the earnings during that period by the number of weeks and
 26 parts of weeks during which the employee earned wages shall be
 27 followed if results just and fair to both parties will be obtained. If by
 28 reason of the shortness of the time during which the employee has been
 29 in the employment of the employer or of the casual nature or terms of
 30 the employment it is impracticable to compute the average weekly
 31 wages for the employee, the employee's average weekly wages shall be
 32 considered to be the average weekly amount that, during the fifty-two
 33 (52) weeks before the date of disability, was being earned by a person
 34 in the same grade employed at the same work by the same employer or,
 35 if there is no person so employed, by a person in the same grade
 36 employed in that same class of employment in the same district.
 37 Whenever allowances of any character are made to an employee
 38 instead of wages or a specified part of the wage contract, they shall be
 39 considered a part of the employee's earnings.

40 (w) **In computing the average weekly wage for an employee who**
 41 **has sustained a compensable occupational disease who has**
 42 **returned to work and has a later period of disability due to that**



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1 occupational disease after July 1, 2002, the average weekly wage
 2 for that period of disability shall be determined based on the
 3 average weekly wage at the time of that disability subject to the
 4 maximum average weekly wage in effect as of the last day worked,
 5 computed as set forth in this section.

6 (x) The provisions of this article may not be construed to result in
 7 an award of benefits in which the number of weeks paid or to be paid
 8 for temporary total disability, temporary partial disability, or permanent
 9 total disability benefits combined exceeds five hundred (500) weeks.
 10 This section shall not be construed to prevent a person from applying
 11 for an award under IC 22-3-3-13. However, in case of permanent total
 12 disability resulting from a disablement occurring on or after January 1,
 13 1998, the minimum total benefit shall not be less than seventy-five
 14 thousand dollars (\$75,000).

15 SECTION 23. IC 22-3-7-21 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No
 17 compensation is allowed for any condition of physical or mental
 18 ill-being, disability, disablement, or death for which compensation is
 19 recoverable on account of accidental injury under chapters 2 through
 20 6 of this article.

21 (b) No compensation is allowed for any disease or death knowingly
 22 self-inflicted by the employee, or due to:

23 (1) his intoxication;

24 (2) his commission of an offense; or his knowing failure to use a
 25 safety appliance;

26 (3) his knowing failure to obey a reasonable written or printed
 27 rule of the employer which has been posted in a conspicuous
 28 position in the place of work or his knowing failure to perform
 29 any statutory duty: duty, other than duties relating to safety
 30 equipment and rules as set forth in subsection (b).

31 The burden of proof is on the defendant.

32 (c) This subsection does not apply to compensation due to a
 33 school to work student under section 2.5(b)(2) of this chapter. Each
 34 payment of monetary compensation allowed under sections 11, 15,
 35 16, and 19 of this chapter shall be reduced by fifteen percent (15%)
 36 for an occupational disease or a death resulting from an
 37 occupational disease caused by the employee's intentional:

38 (1) failure to use safety equipment furnished by the employer
 39 or required by the employer to be used by the employee; or

40 (2) failure to obey a reasonable written or printed rule of the
 41 employer which has been posed in a conspicuous position in
 42 the place of work.



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(d) The burden of proof is on the defendant.

SECTION 24. IC 22-3-7-27, AS AMENDED BY P.L.235-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. (a) If the employer and the employee or the employee's dependents disagree in regard to the compensation payable under this chapter, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned.

(b) The application making claim for compensation filed with the worker's compensation board shall state the following:

(1) The approximate date of the last day of the last exposure and the approximate date of the disablement.

(2) The general nature and character of the illness or disease claimed.

(3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement, the name and address of such other employer or employers.

(4) In case of death, the date and place of death.

(5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the board in its discretion, and, in the exercise of such discretion, it may, in proper cases, order a trial de novo. Such amendment shall relate back to the date of the filing of the original application so amended.

(c) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties, in the manner prescribed by the board, of the time and place of hearing. The hearing of all claims for compensation on account of occupational disease shall be held in the county in which the last exposure occurred or in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board



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1 member, may be heard in any county within the board member's
2 jurisdiction.

3 (d) The board by any or all of its members shall hear the parties at
4 issue, their representatives, and witnesses, and shall determine the
5 dispute in a summary manner. The award shall be filed with the record
6 of proceedings, and a copy thereof shall immediately be sent by
7 registered mail to each of the parties in dispute.

8 (e) If an application for review is made to the board within thirty
9 (30) days from the date of the award made by less than all the
10 members, the full board, if the first hearing was not held before the full
11 board, shall review the evidence, or, if deemed advisable, hear the
12 parties at issue, their representatives, and witnesses as soon as
13 practicable, and shall make an award and file the same with the finding
14 of the facts on which it is based and send a copy thereof to each of the
15 parties in dispute, in like manner as specified in subsection (d).

16 (f) An award of the board by less than all of the members as
17 provided in this section, if not reviewed as provided in this section,
18 shall be final and conclusive. An award by the full board shall be
19 conclusive and binding unless either party to the dispute, within thirty
20 (30) days after receiving a copy of such award, appeals to the court of
21 appeals under the same terms and conditions as govern appeals in
22 ordinary civil actions. The court of appeals shall have jurisdiction to
23 review all questions of law and of fact. The board, of its own motion,
24 may certify questions of law to the court of appeals for its decision and
25 determination. An assignment of errors that the award of the full board
26 is contrary to law shall be sufficient to present both the sufficiency of
27 the facts found to sustain the award and the sufficiency of the evidence
28 to sustain the finding of facts. All such appeals and certified questions
29 of law shall be submitted upon the date filed in the court of appeals,
30 shall be advanced upon the docket of the court, and shall be determined
31 at the earliest practicable date, without any extensions of time for filing
32 briefs. An award of the full board affirmed on appeal, by the employer,
33 shall be increased thereby five percent (5%), and by order of the court
34 may be increased ten percent (10%).

35 (g) Upon order of the worker's compensation board made after five
36 (5) days notice is given to the opposite party, any party in interest may
37 file in the circuit or superior court of the county in which the
38 disablement occurred a certified copy of the memorandum of
39 agreement, approved by the board, or of an order or decision of the
40 board, or of an award of the full board unappealed from, or of an award
41 of the full board affirmed upon an appeal, whereupon the court shall
42 render judgment in accordance therewith and notify the parties. Such

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1 judgment shall have the same effect and all proceedings in relation
 2 thereto shall thereafter be the same as though such judgment has been
 3 rendered in a suit duly heard and determined by the court. Any such
 4 judgment of such circuit or superior court, unappealed from or affirmed
 5 on appeal or modified in obedience to the mandate of the court of
 6 appeals, shall be modified to conform to any decision of the industrial
 7 board ending, diminishing, or increasing any weekly payment under the
 8 provisions of subsection (i) upon the presentation to it of a certified
 9 copy of such decision.

10 (h) In all proceedings before the worker's compensation board or in
 11 a court under the compensation provisions of this chapter, the costs
 12 shall be awarded and taxed as provided by law in ordinary civil actions
 13 in the circuit court. **Prejudgment interest shall be awarded at a rate**
 14 **of eight percent (8%) per year accruing from the date of filing of**
 15 **the application for adjustment of claim as determined under**
 16 **subsection (a).**

17 (i) The power and jurisdiction of the worker's compensation board
 18 over each case shall be continuing, and, from time to time, it may, upon
 19 its own motion or upon the application of either party on account of a
 20 change in conditions, make such modification or change in the award
 21 ending, lessening, continuing, or extending the payments previously
 22 awarded, either by agreement or upon hearing, as it may deem just,
 23 subject to the maximum and minimum provided for in this chapter.
 24 When compensation which is payable in accordance with an award or
 25 settlement contract approved by the board is ordered paid in a lump
 26 sum by the board, no review shall be had as in this subsection
 27 mentioned. Upon making any such change, the board shall immediately
 28 send to each of the parties a copy of the modified award. No such
 29 modification shall affect the previous award as to any money paid
 30 thereunder. The board shall not make any such modification upon its
 31 own motion, nor shall any application therefor be filed by either party
 32 after the expiration of two (2) years from the last day for which
 33 compensation was paid under the original award made either by
 34 agreement or upon hearing, except that applications for increased
 35 permanent partial impairment are barred unless filed within one (1)
 36 year from the last day for which compensation was paid. The board
 37 may at any time correct any clerical error in any finding or award.

38 (j) The board or any member thereof may, upon the application of
 39 either party or upon its own motion, appoint a disinterested and duly
 40 qualified physician or surgeon to make any necessary medical
 41 examination of the employee and to testify in respect thereto. Such
 42 physician or surgeon shall be allowed traveling expenses and a



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1 reasonable fee, to be fixed by the board. The fees and expenses of such
 2 physician or surgeon shall be paid by the state only on special order of
 3 the board or a member thereof.

4 (k) The board or any member thereof may, upon the application of
 5 either party or upon its own motion, appoint a disinterested and duly
 6 qualified industrial hygienist, industrial engineer, industrial physician,
 7 or chemist to make any necessary investigation of the occupation in
 8 which the employee alleges that ~~he~~ **the employee** was last exposed to
 9 the hazards of the occupational disease claimed upon, and testify with
 10 respect to the occupational disease health hazards found by such person
 11 or persons to exist in such occupation. Such person or persons shall be
 12 allowed traveling expenses and a reasonable fee, to be fixed by the
 13 board. The fees and expenses of such persons shall be paid by the state,
 14 only on special order of the board or a member thereof.

15 (l) Whenever any claimant misconceives the claimant's remedy and
 16 files an application for adjustment of a claim under IC 22-3-2 through
 17 IC 22-3-6 and it is subsequently discovered, at any time before the final
 18 disposition of such cause, that the claim for injury or death which was
 19 the basis for such application should properly have been made under
 20 the provisions of this chapter, then the application so filed under
 21 IC 22-3-2 through IC 22-3-6 may be amended in form or substance or
 22 both to assert a claim for such disability or death under the provisions
 23 of this chapter, and it shall be deemed to have been so filed as amended
 24 on the date of the original filing thereof, and such compensation may
 25 be awarded as is warranted by the whole evidence pursuant to the
 26 provisions of this chapter. When such amendment is submitted, further
 27 or additional evidence may be heard by the worker's compensation
 28 board when deemed necessary. Nothing in this section contained shall
 29 be construed to be or permit a waiver of any of the provisions of this
 30 chapter with reference to notice or time for filing a claim, but notice of
 31 filing of a claim, if given or done, shall be deemed to be a notice or
 32 filing of a claim under the provisions of this chapter if given or done
 33 within the time required in this chapter.

34 SECTION 25. IC 22-4-2-22 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. "Valid claim"
 36 means a claim filed by an individual who has established qualifying
 37 wage credits and who is totally, partially, or part-totally unemployed;
 38 Provided, no individual in a benefit period may file a valid claim for a
 39 ~~waiting period~~ or benefit period rights with respect to any period
 40 subsequent to the expiration of such benefit period.

41 SECTION 26. IC 22-4-2-29 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 29. "Insured

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unemployment" means unemployment during a given week for which waiting period credit or benefits, **if applicable**, are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

SECTION 27. IC 22-4-4-3, AS AMENDED BY P.L.30-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) For calendar quarters beginning on and after April 1, 1979, and before April 1, 1984, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand six hundred sixty-six dollars (\$3,666) and may not include payments specified in section 2(b) of this chapter.

(b) For calendar quarters beginning on and after April 1, 1984, and before April 1, 1985, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand nine hundred twenty-six dollars (\$3,926) and may not include payments specified in section 2(b) of this chapter.

(c) For calendar quarters beginning on and after April 1, 1985, and before January 1, 1991, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand one hundred eighty-six dollars (\$4,186) and may not include payments specified in section 2(b) of this chapter.

(d) For calendar quarters beginning on and after January 1, 1991, and before July 1, 1995, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand eight hundred ten dollars (\$4,810) and may not include payments specified in section 2(b) of this chapter.

(e) For calendar quarters beginning on and after July 1, 1995, and before July 1, 1997, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand dollars (\$5,000) and may not include payments specified in section 2(b) of this chapter.

(f) For calendar quarters beginning on and after July 1, 1997, and before July 1, 1998, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand four hundred dollars (\$5,400) and may not include payments specified in section 2(b) of this chapter.



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(g) For calendar quarters beginning on and after July 1, 1998, and before July 1, 1999, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand six hundred dollars (\$5,600) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(h) For calendar quarters beginning on and after July 1, 1999, and before July 1, 2000, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand eight hundred dollars (\$5,800) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(i) For calendar quarters beginning on and after July 1, 2000, and before July 1, 2001, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed six thousand seven hundred dollars (\$6,700) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(j) For calendar quarters beginning on and after July 1, 2001, and before July 1, 2002, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand three hundred dollars (\$7,300) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(k) For calendar quarters beginning on and after July 1, 2002, **and before July 1, 2003**, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand nine hundred dollars (\$7,900) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(l) For calendar quarters beginning on and after July 1, 2003, "wage credits" means remuneration paid for employment by an

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1 employer to an individual and remuneration received as tips or
 2 gratuities in accordance with Sections 3102 and 3301 et seq. of the
 3 Internal Revenue Code. Wage credits may not exceed eight
 4 thousand five hundred dollars (\$8,500) and may not include
 5 payments that are excluded from the definition of wages under
 6 section 2(b) of this chapter.

7 SECTION 28. IC 22-4-14-4 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. ~~As a condition~~
 9 precedent to the payment of benefits to an individual with respect to
 10 any week such individual shall be required to serve a waiting period of
 11 one (1) week in which he has been totally, partially or part-totally
 12 unemployed and with respect to which he has received no benefits, but
 13 during which he was eligible for benefits in all other respects and was
 14 not otherwise ineligible for benefits under any provisions of this article.
 15 Such waiting period shall be a week in the individual's benefit period
 16 and during such week such individual shall be physically and mentally
 17 able to work and available for work. ~~No~~ An individual in a benefit
 18 period may **not** file for waiting period or benefit period rights with
 19 respect to any subsequent period. ~~Provided, however, That no waiting~~
 20 ~~period shall be required as a prerequisite for drawing extended~~
 21 ~~benefits.~~

22 SECTION 29. IC 22-4-15-1, AS AMENDED BY P.L.290-2001,
 23 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2002]: Sec. 1. (a) With respect to benefit periods established
 25 on and after July 6, 1980, an individual who has voluntarily left the
 26 individual's most recent employment without good cause in connection
 27 with the work or who was discharged from the individual's most recent
 28 employment for just cause is ineligible for ~~waiting period or~~ benefit
 29 rights for the week in which the disqualifying separation occurred and
 30 until the individual has earned remuneration in employment equal to
 31 or exceeding the weekly benefit amount of the individual's claim in
 32 each of eight (8) weeks. If the qualification amount has not been earned
 33 at the expiration of an individual's benefit period, the unearned amount
 34 shall be carried forward to an extended benefit period or to the benefit
 35 period of a subsequent claim.

36 (b) When it has been determined that an individual has been
 37 separated from employment under disqualifying conditions as outlined
 38 in this section, the maximum benefit amount of ~~his~~ **the individual's**
 39 current claim, as initially determined, shall be reduced by twenty-five
 40 percent (25%). If twenty-five percent (25%) of the maximum benefit
 41 amount is not an even dollar amount, the amount of such reduction will
 42 be raised to the next higher even dollar amount. The maximum benefit



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1 amount may not be reduced by more than twenty-five percent (25%)
 2 during any benefit period or extended benefit period.

3 (c) The disqualifications provided in this section shall be subject to
 4 the following modifications:

5 (1) An individual shall not be subject to disqualification because
 6 of separation from the individual's employment if:

7 (A) the individual left to accept with another employer
 8 previously secured permanent full-time work which offered
 9 reasonable expectation of continued covered employment and
 10 betterment of wages or working conditions; and thereafter was
 11 employed on said job;

12 (B) having been simultaneously employed by two (2)
 13 employers, the individual leaves one (1) such employer
 14 voluntarily without good cause in connection with the work
 15 but remains in employment with the second employer with a
 16 reasonable expectation of continued employment; or

17 (C) the individual left to accept recall made by a base period
 18 employer.

19 (2) An individual whose unemployment is the result of medically
 20 substantiated physical disability and who is involuntarily
 21 unemployed after having made reasonable efforts to maintain the
 22 employment relationship shall not be subject to disqualification
 23 under this section for such separation.

24 (3) An individual who left work to enter the armed forces of the
 25 United States shall not be subject to disqualification under this
 26 section for such leaving of work.

27 (4) An individual whose employment is terminated under the
 28 compulsory retirement provision of a collective bargaining
 29 agreement to which the employer is a party, or under any other
 30 plan, system, or program, public or private, providing for
 31 compulsory retirement and who is otherwise eligible shall not be
 32 deemed to have left the individual's work voluntarily without
 33 good cause in connection with the work. However, if such
 34 individual subsequently becomes reemployed and thereafter
 35 voluntarily leaves work without good cause in connection with the
 36 work, the individual shall be deemed ineligible as outlined in this
 37 section.

38 (5) An otherwise eligible individual shall not be denied benefits
 39 for any week because the individual is in training approved under
 40 Section 236(a)(1) of the Trade Act of 1974, nor shall the
 41 individual be denied benefits by reason of leaving work to enter
 42 such training, provided the work left is not suitable employment,



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or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from whom the spouse voluntarily separated.

(8) An individual who is an affected employee (as defined in IC 22-4-43-1(1)) and is subject to the work sharing unemployment insurance program under IC 22-4-43 is not disqualified from participating in the work sharing unemployment insurance program for being an affected employee.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule



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1 of an employer;

2 (3) unsatisfactory attendance, if the individual cannot show good
3 cause for absences or tardiness;

4 (4) damaging the employer's property through willful negligence;

5 (5) refusing to obey instructions;

6 (6) reporting to work under the influence of alcohol or drugs or
7 consuming alcohol or drugs on employer's premises during
8 working hours;

9 (7) conduct endangering safety of self or coworkers; or

10 (8) incarceration in jail following conviction of a misdemeanor or
11 felony by a court of competent jurisdiction or for any breach of
12 duty in connection with work which is reasonably owed an
13 employer by an employee.

14 SECTION 30. IC 22-4-15-2, AS AMENDED BY P.L.290-2001,
15 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2002]: Sec. 2. (a) With respect to benefit periods established
17 on and after July 3, 1977, an individual is ineligible for ~~waiting period~~
18 ~~or~~ benefit rights, or extended benefit rights, if the department finds that,
19 being totally, partially, or part-totally unemployed at the time when the
20 work offer is effective or when the individual is directed to apply for
21 work, the individual fails without good cause:

22 (1) to apply for available, suitable work when directed by the
23 commissioner, the deputy, or an authorized representative of the
24 department of workforce development or the United States
25 training and employment service;

26 (2) to accept, at any time after the individual is notified of a
27 separation, suitable work when found for and offered to the
28 individual by the commissioner, the deputy, or an authorized
29 representative of the department of workforce development or the
30 United States training and employment service, or an employment
31 unit; or

32 (3) to return to the individual's customary self-employment when
33 directed by the commissioner or the deputy.

34 (b) With respect to benefit periods established on and after July 6,
35 1980, the ineligibility shall continue for the week in which the failure
36 occurs and until the individual earns remuneration in employment
37 equal to or exceeding the weekly benefit amount of the individual's
38 claim in each of eight (8) weeks. If the qualification amount has not
39 been earned at the expiration of an individual's benefit period, the
40 unearned amount shall be carried forward to an extended benefit period
41 or to the benefit period of a subsequent claim.

42 (c) With respect to extended benefit periods established on and after

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July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. The maximum benefit amount of the individual's current claim may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

- (1) the degree of risk involved to such individual's health, safety, and morals;
- (2) the individual's physical fitness and prior training and experience;
- (3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- (4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which makes such offered work unsuitable to the individual because of the distance involved.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.



(4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:

(A) the individual's average weekly benefit amount for the individual's benefit year; plus

(B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.

(2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.

(3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

SECTION 31. IC 22-4-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a)** An individual shall be ineligible for ~~waiting period or~~ benefit rights for any week with respect to which ~~his~~ **the individual's** total or partial or part-total unemployment is due to a labor dispute at the factory, establishment,

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or other premises at which ~~he~~ **the individual** was last employed.

(b) This section shall not apply to an individual if:

(1) ~~he~~ **the individual** has terminated ~~his~~ **the individual's** employment, or ~~his~~ **the individual's** employment has been terminated, with the employer involved in the labor dispute; ~~or if~~

(2) the labor dispute which caused ~~his~~ **the individual's** unemployment has terminated and any period necessary to resume normal activities at ~~his~~ **the individual's** place of employment has elapsed; or if

(3) all of the following conditions exist: ~~He~~

(A) **The individual** is not participating in or financing or directly interested in the labor dispute which caused ~~his~~ **the individual's** unemployment. ~~and he~~

(B) **The individual** does not belong to a grade or class of workers of which, immediately before the commencement of ~~his~~ **the individual's** unemployment, there were members employed at the same premises as ~~he~~; **the individual**, any of whom are participating in or financing or directly interested in the dispute. ~~and he~~

(C) **The individual** has not voluntarily stopped working, other than at the direction of ~~his~~ **the worker's** employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress.

(c) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(d) Upon request of any claimant or employer involved in an issue arising under this section, the deputy shall, and in any other case the deputy may, refer claims of individuals with respect to whom there is an issue of the application of this section to an administrative law judge who shall make the initial determination with respect thereto, in accordance with the procedure in IC 22-4-17-3.

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for ~~waiting period~~ or benefit rights under this section solely by reason of ~~his~~ **the individual's** failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.



SECTION 32. IC 22-4-15-4, AS AMENDED BY P.L.290-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) An individual ~~shall be~~ **is** ineligible for ~~waiting period or~~ benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding ~~his~~ **the individual's** weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of ~~such~~ **the** employer, or would have been chargeable except for the application of this chapter. For ~~the~~ purposes of this subdivision, ~~(2)~~; federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than ~~his~~ **the individual's** weekly benefit amount, an otherwise eligible individual ~~shall be~~ **is** not ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension, retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 33. IC 22-4-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. Except as provided in IC ~~1971~~, 22-4-22, an individual ~~shall be~~ **is** ineligible for ~~waiting period or~~ benefit rights for any week with respect to which or a part of which ~~he~~ **the individual** receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. ~~Provided, that~~ **However,** this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that ~~he~~ **the individual** is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.



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1 SECTION 34. IC 22-4-16-1 IS AMENDED TO READ AS
 2 FOLLOWS[EFFECTIVE JULY 1, 2002]: Sec. 1. Notwithstanding any
 3 other provisions of this article, if an individual knowingly fails to
 4 disclose amounts earned during any week in ~~his waiting period~~, **the**
 5 **individual's** benefit period or extended benefit period with respect to
 6 which benefit rights or extended benefit rights are claimed, or
 7 knowingly fails to disclose or has falsified as to any fact ~~which that~~
 8 would have disqualified ~~him~~ **the individual** or rendered ~~him~~ **the**
 9 **individual** ineligible for benefits or extended benefits or would have
 10 reduced ~~his~~ **the individual's** benefit rights or extended benefit rights
 11 during such a week, all of ~~his~~ **the individual's** wage credits established
 12 prior to the week of the falsification or failure to disclose shall be
 13 ~~cancelled, canceled,~~ and any benefits or extended benefits ~~which that~~
 14 might otherwise have become payable to ~~him~~ **the individual** and any
 15 benefit rights or extended benefit rights based upon those wage credits
 16 shall be forfeited.

17 SECTION 35. IC 22-4-17-2, AS AMENDED BY P.L.290-2001,
 18 SECTION 10, IS AMENDED TO READ AS FOLLOWS[EFFECTIVE
 19 JULY 1, 2002]: Sec. 2. (a) When an individual files an initial claim, the
 20 department shall promptly make a determination of ~~his~~ **the**
 21 **individual's** status as an insured worker in a form prescribed by the
 22 board. A written notice of the determination of insured status shall be
 23 furnished ~~him~~ **to the individual** promptly. Each such determination
 24 shall be based on and include a written statement showing the amount
 25 of wages paid to the individual for insured work by each employer
 26 during the individual's base period and shall include a finding as to
 27 whether such wages meet the requirements for the individual to be an
 28 insured worker, and, if so, the week ending date of the first week of the
 29 individual's benefit period, the individual's weekly benefit amount, and
 30 the maximum amount of benefits that may be paid to the individual for
 31 weeks of unemployment in the individual's benefit period. For the
 32 individual who is not insured, the notice shall include the reason for the
 33 determination. Unless the individual, within twenty (20) days after such
 34 determination was mailed to the individual's last known address, or
 35 otherwise delivered to the individual, asks a hearing thereon before an
 36 administrative law judge, such determination shall be final and benefits
 37 shall be paid or denied in accordance therewith.

38 (b) The department shall promptly furnish each employer in the base
 39 period whose experience or reimbursable account is potentially
 40 chargeable with benefits to be paid to such individual with a notice in
 41 writing of the employer's benefit liability. Such notice shall contain the
 42 date, the name and social security account number of the individual,



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the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within twenty (20) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims ~~waiting period credit~~ or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of the claimant for ~~waiting period credit~~ or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within twenty (20) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within



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1 twenty-five (25) days after such notification was mailed to the
 2 claimant's or employer's last known address or otherwise delivered to
 3 the claimant or employer, asks a hearing before an administrative law
 4 judge thereon, such decision shall be final and benefits shall be paid or
 5 denied in accordance therewith. If such hearing is desired, the request
 6 therefor shall be filed with the commissioner in writing within the
 7 prescribed periods as above set forth in this subsection and shall be in
 8 such form as the board may prescribe. In the event a hearing is
 9 requested by an employer or the department after it has been
 10 administratively determined that benefits should be allowed to a
 11 claimant, entitled benefits shall continue to be paid to said claimant
 12 unless said administrative determination has been reversed by a due
 13 process hearing. Benefits with respect to any week not in dispute shall
 14 be paid promptly regardless of any appeal.

15 (f) ~~No~~ A person may **not** participate on behalf of the department in
 16 any case in which the person is an interested party.

17 (g) Solely on the ground of obvious administrative error appearing
 18 on the face of an original determination, and within the benefit year of
 19 the affected claims, the commissioner, or a representative authorized
 20 by the commissioner to act in the commissioner's behalf, may
 21 reconsider and direct the deputy to revise the original determination so
 22 as to correct the obvious error appearing therein. Time for filing an
 23 appeal and requesting a hearing before an administrative law judge
 24 regarding the determinations handed down pursuant to this subsection
 25 shall begin on the date following the date of revision of the original
 26 determination and shall be filed with the commissioner in writing
 27 within the prescribed periods as above set forth in subsection (c).

28 (h) Notice to the employer and the claimant that the determination
 29 of the department is final if a hearing is not requested shall be
 30 prominently displayed on the notice of the determination which is sent
 31 to the employer and the claimant.

32 SECTION 36. IC 22-4-43 IS ADDED TO THE INDIANA CODE
 33 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2002]:

35 **Chapter 43. Work Sharing**

36 **Sec. 1. The following definitions apply throughout this chapter:**

37 (1) "Affected employee" means an individual who has been
 38 continuously on the payroll of an affected unit for at least
 39 three (3) months before the employing unit submits a work
 40 sharing plan.

41 (2) "Affected unit" means a specific plant, department, shift,
 42 or other definable unit of an employing unit:



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- 1 (A) that has at least two (2) employees; and
 2 (B) to which an approved work sharing plan applies.
 3 (3) "Approved work sharing plan" means a plan that satisfies
 4 the purpose set forth in section 2 of this chapter and has the
 5 approval of the commissioner.
 6 (4) "Commissioner" means the commissioner of workforce
 7 development appointed under IC 22-4.1-3-1.
 8 (5) "Employee association" means:
 9 (A) an association that is a party to a collective bargaining
 10 agreement under which it may negotiate a work sharing
 11 plan; or
 12 (B) an association authorized by all of its members to
 13 become a party to a work sharing plan.
 14 (6) "Normal weekly work hours" means the lesser of:
 15 (A) the number of hours in a week that an employee
 16 customarily works for the regular employing unit; or
 17 (B) forty (40) hours.
 18 (7) "Work sharing benefit" means benefits payable to an
 19 affected employee for work performed under an approved
 20 work sharing plan, including benefits payable to a federal
 21 civilian employee or former member of the armed forces
 22 under 5 U.S.C. 8500 et seq., but does not include benefits that
 23 are otherwise payable under this article.
 24 (8) "Work sharing employer" means an employing unit or
 25 employer association for which a work sharing plan has been
 26 approved.
 27 (9) "Work sharing plan" means a plan of an employing unit
 28 or employer association under which:
 29 (A) normal weekly work hours of affected employees are
 30 reduced; and
 31 (B) affected employees share the work that remains after
 32 the reduction.
 33 **Sec. 2. The work sharing unemployment insurance program**
 34 **seeks to:**
 35 (1) preserve the jobs of employees and the work force of an
 36 employer during lowered economic activity by reduction in
 37 work hours or workdays rather than by a layoff of some
 38 employees while other employees continue their normal
 39 weekly work hours or workdays; and
 40 (2) ameliorate the adverse effect of reduction in business
 41 activity by providing benefits for the part of the normal
 42 weekly work hours or workdays in which an employee does



1 not work.

2 Sec. 3. An employing unit or employee association that wishes
3 to participate in the work sharing unemployment insurance
4 program shall submit to the commissioner a written work sharing
5 plan that the employing unit or representative of the employee
6 association has signed.

7 Sec. 4. (a) Within fifteen (15) days after receipt of a work
8 sharing plan, the commissioner shall give written approval or
9 disapproval of the plan to the employing unit or employee
10 association.

11 (b) The decision of the commissioner to disapprove a work
12 sharing plan is final and may not be appealed.

13 (c) An employing unit or employee association may submit a
14 new work sharing plan not less than fifteen (15) days after
15 disapproval of a work sharing plan.

16 Sec. 5. The commissioner shall approve a work sharing plan
17 that meets the following requirements:

- 18 (1) The work sharing plan must apply to:
19 (A) at least ten percent (10%) of the employees in an
20 affected unit; or
21 (B) at least twenty (20) employees in an affected unit in
22 which the work sharing plan applies equally to all affected
23 employees.
24 (2) The normal weekly work hours of affected employees in
25 the affected unit shall be reduced by at least ten percent
26 (10%) but the reduction may not exceed fifty percent (50%)
27 unless the fifty percent (50%) limit is waived by the
28 commissioner.

29 Sec. 6. A work sharing plan must:

- 30 (1) identify the affected unit;
31 (2) identify each employee in the affected unit by:
32 (A) name;
33 (B) Social Security number; and
34 (C) any other information that the commissioner requires;
35 (3) specify an expiration date that is not more than six (6)
36 months after the effective date of the work sharing plan;
37 (4) specify the effect that the work sharing plan will have on
38 the fringe benefits of each employee in the affected unit,
39 including:
40 (A) health insurance for hospital, medical, dental, and
41 similar services;
42 (B) retirement benefits under benefit pension plans as



- 1 defined in the federal Employee Retirement Security Act
 2 (29 U.S.C. 1001 et seq.);
 3 (C) holiday and vacation pay;
 4 (D) sick leave; and
 5 (E) similar advantages;
 6 (5) certify that:
 7 (A) each affected employee has been continuously on the
 8 payroll of the employing unit for three (3) months
 9 immediately before the date on which the employing unit
 10 or employer association submits the work sharing plan;
 11 and
 12 (B) the total reduction in normal weekly work hours is in
 13 place of layoffs that would have:
 14 (i) affected at least the number of employees specified in
 15 section 5(1) of this chapter; and
 16 (ii) would have resulted in an equivalent reduction in
 17 work hours; and
 18 (6) contain the written approval of:
 19 (A) the collective bargaining agent for each collective
 20 bargaining agreement that covers any affected employee
 21 in the affected unit; or
 22 (B) if there is not an agent, a representative of the
 23 employees or employee association in the affected unit.
 24 **Sec. 7.** If a work sharing plan serves the work sharing employer
 25 as a transitional step to permanent staff reduction, the work
 26 sharing plan must contain a reemployment assistance plan for each
 27 affected employee that the work sharing employer develops with
 28 the commissioner.
 29 **Sec. 8.** The work sharing employer shall agree to:
 30 (1) submit reports that are necessary to administer the work
 31 sharing plan; and
 32 (2) allow the department to have access to all records
 33 necessary to:
 34 (A) verify the work sharing plan before its approval; and
 35 (B) monitor and evaluate the application of the work
 36 sharing plan after its approval.
 37 **Sec. 9.** (a) An approved work sharing plan may be modified if
 38 the modification meets the requirements for approval under
 39 section 6 of this chapter and the commissioner approves the
 40 modifications.
 41 (b) An employing unit may add an employee to a work sharing
 42 plan when the employee has been continuously on the payroll for

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three (3) months.

(c) An approved modification of a work sharing plan may not change its expiration date.

Sec. 10. (a) An affected employee is eligible under section 12 of this chapter to receive work sharing benefits for each week in which the commissioner determines that the affected employee is:

(1) able to work; and

(2) available for more hours of work or full-time work for the worksharing employer.

(b) An affected employee who otherwise is eligible may not be denied work sharing benefits for lack of effort to secure work as set forth in IC 22-4-14-3 or for failure to apply for available suitable work as set forth in IC 22-4-15-2 from a person other than the work sharing employer.

(c) An affected employee shall apply for benefits under IC 22-4-17-1.

(d) An affected employee who otherwise is eligible for benefits is:

(1) considered to be unemployed for the purpose of the work sharing unemployment insurance program; and

(2) not subject to the requirements of IC 22-4-14-2.

Sec. 11. The weekly work sharing unemployment compensation benefit due to an affected worker is determined in STEP FOUR of the following formula:

STEP ONE: Determine the weekly benefit that would be due to the affected employee under IC 22-4-12-4.

STEP TWO: Determine the percentage of reduction in the employee's normal work hours as to those under the approved work sharing plan.

STEP THREE: Multiply the number determined in STEP ONE by the quotient determined in STEP TWO.

STEP FOUR: If the product determined under STEP THREE is not a multiple of one dollar (\$1), round down to the nearest lower multiple of one dollar (\$1).

Sec. 12. (a) An affected employee is eligible to receive not more than twenty-six (26) weeks of work sharing benefits during each benefit year.

(b) The total amount of benefits payable under IC 22-4-12-4 and work sharing benefits payable under this chapter may not exceed the total payable for the benefit year under IC 22-4-12-4(a).

Sec. 13. The board shall adopt rules under IC 4-22-2 applicable to partially unemployed workers for determining their weekly



benefit amount due under this chapter, subject to IC 22-4-12-5(b).

Sec. 14. During a week in which an affected employee who otherwise is eligible for benefits does not work for the work sharing employer:

(1) the individual shall be paid benefits in accordance with this chapter; and

(2) the week does not count as a week for which a work sharing benefit is received.

Sec. 15. During a week in which an employee earns wages under an approved work sharing plan and other wages, the work sharing benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the other wages:

(1) exceed the wages earned under the approved work sharing plan; and

(2) do not exceed ninety percent (90%) of the wages that the individual earns for normal weekly work hours.

This computation applies regardless of whether the employee earned the other wage from the work sharing employer or other employer.

Sec. 16. While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

(1) extended benefits under IC 22-4-12-4; or

(2) supplemental federal unemployment compensation.

Sec. 17. The commissioner may revoke approval of an approved work sharing plan for good cause, including:

(1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;

(2) failure to comply with an assurance in the approved work sharing plan;

(3) unreasonable revision of a productivity standard of the affected unit; and

(4) violation of a criterion on which the commissioner based the approval of the work sharing plan.

SECTION 37. [EFFECTIVE JULY 1, 2002] (a) Notwithstanding IC 22-4-43-13, as added by this act, the unemployment insurance board shall carry out the duties imposed upon it under IC 22-4-43-13, as added by this act, under interim written guidelines approved by the commissioner of workforce development.

(b) This SECTION expires on the earlier of the following:

(1) The date rules are adopted under IC 22-4-43-13, as added



1 **by this act.**
2 **(2) December 31, 2003.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 71, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 71 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 1.

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SENATE MOTION

Mr. President: I move that Senate Bill 71 be amended to read as follows:

Page 2, line 1, after "provide" strike "a" and insert "**one (1) or more**".

Page 2, line 2, strike "break of" and insert "**breaks totaling**".

Page 2, line 3, strike "six (6)" and insert "**eight (8)**".

Page 2, strike lines 4 through 6.

Page 2, after line 6, begin a new paragraph and insert:
"SECTION 2. **An emergency is declared for this act.**"

(Reference is to SB 71 as printed January 29, 2002.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred Senate Bill 71, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, strike lines 9 through 15.

Page 1, line 16, strike "(3) is operated by a nonprofit".

Page 1, line 16, delete "entity," and insert "~~entity~~".

Page 1, line 16, delete "a municipality (as defined".

Page 1, delete line 17.

Page 1, line 18, strike "(c)" and insert "**(b)**".

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 2. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 25.5. (a) This section does not provide an exception to the hours a child is permitted to work under section 20 of this chapter.**

(b) It is unlawful for a person, firm, limited liability company, or corporation to permit a child who is:

(1) less than eighteen (18) years of age; and

(2) employed by the person, firm, limited liability company, or corporation;

to work after 10 p.m. and before 6 a.m. in an establishment that is open to the public unless another employee at least eighteen (18) years of age also works in the establishment during the same hours as the child.

SECTION 3. IC 20-8.1-4-31, AS AMENDED BY P.L.122-2001, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 31. (a) A person, firm, limited liability company, or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection

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under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes under section 20 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(5) For an hour violation of more than thirty (30) minutes under

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section 20 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 or 25.5 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(8) For each minor employed in violation of section 21(b) of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.

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(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(9) For each violation of section 20.5 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.

(C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.

(D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(b) A civil penalty assessed under subsection (a):

(1) is subject to IC 4-21.5-3-6; and

(2) becomes effective without a proceeding under IC 4-21.5-3 unless a person requests an administrative review not later than thirty (30) days after notice of the assessment is given.

(c) For purposes of determining whether a second violation has occurred when assessing a civil penalty under subsection (a), a first violation expires one (1) year after the date of issuance of a warning letter by the department of labor under subsection (a).

(d) For purposes of determining recurring violations of this section, each location of an employer shall be considered separate and distinct from another location of the same employer.

(e) There is established an employment of youth fund for the purpose of educating affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. One-half (1/2) of the fund each year shall be used for the purpose of the education provision of this subsection. This portion of the fund may be used to award grants to provide educational programs. The remaining one-half (1/2) of the fund shall be used each year for the expenses of hiring and salaries of additional inspectors to enforce this chapter under

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section 29 of this chapter. All inspectors hired to enforce this chapter shall also be available to educate affected parties on the purposes and contents of this chapter and the responsibilities of all parties under this chapter. The fund shall be administered by the department of labor. The expenses of administering the fund shall be paid from money in the fund. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a state fiscal year does not revert to the state general fund. Revenue received from civil penalties under this section shall be deposited in the employment of youth fund.

SECTION 4. IC 22-3-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in IC 22-3-2 through IC 22-3-6, shall comply with the provisions of IC 22-3-2 through IC 22-3-6 respectively to pay and accept compensation for personal injury or death by accident arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 2.6 of this chapter.**

(b) IC 22-3-2 through IC 22-3-6 does not apply to railroad employees engaged in train service as:

- (1) engineers;
- (2) firemen;
- (3) conductors;
- (4) brakemen;
- (5) flagmen;
- (6) baggagemen; or
- (7) foremen in charge of yard engines and helpers assigned thereto.

(c) IC 22-3-2 through IC 22-3-6 does not apply to employees of municipal corporations in Indiana who are members of:

- (1) the fire department or police department of any such municipality; and
- (2) a firefighters' pension fund or of a police officers' pension fund.

However, if the common council elects to purchase and procure worker's compensation insurance to insure said employees with respect to medical benefits under IC 22-3-2 through IC 22-3-6, the medical provisions of IC 22-3-2 through IC 22-3-6 apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.



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(d) When any municipal corporation purchases or procures worker's compensation insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund, and pays the premium or premiums for such insurance, the payment of such premiums is a legal and allowable expenditure of funds of any municipal corporation.

(e) Except as provided in subsection (f), where the common council has procured worker's compensation insurance under this section, any member of such fire department or police department employed in the city carrying such worker's compensation insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that such services are provided for in the worker's compensation policy procured by such city, and shall not also recover in addition to that policy for such same benefits provided in IC 36-8-4.

(f) If the medical benefits provided under a worker's compensation policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

(g) The provisions of IC 22-3-2 through IC 22-3-6 apply to:

- (1) members of the Indiana general assembly; and
- (2) field examiners of the state board of accounts.

SECTION 5. IC 22-3-2-2.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 2.6. (a) In addition to section 2 of this chapter, in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for injury or death occurring while:**

- (1) the employee was engaged in the duties of employment at the time of the terrorist attack; or**
- (2) the employee was traveling to or from the place of employment whether or not during working hours, and:**
 - (A) had reached the employer's premises;**
 - (B) had reached the area where the employee parks a motor vehicle; or**
 - (C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.**



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(b) Section 2 of this chapter and subsection (a) apply regardless of:

- (1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or
- (2) whether the terrorist act occurred during the employee's:
 - (A) lunch; or
 - (B) rest; period.

SECTION 6. IC 22-3-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. (a) No compensation is allowed for an injury or death due to the employee's:

- (1) knowingly self-inflicted injury;
- (2) his intoxication;
- (3) his commission of an offense; his knowing failure to use a safety appliance;
- (4) his knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (b)(2);** or
- (5) his knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(b) **This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under IC 22-3-3-8, IC 22-3-3-9, IC 22-3-3-10, IC 22-3-3-21, or IC 22-3-3-22 shall be reduced by fifteen percent (15%) for an injury or a death caused in any degree by the employee's intentional:**

- (1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or
- (2) failure to obey a lawful order or administrative regulation issued by:

- (A) the worker's compensation board; or
- (B) the employer;

for the safety of the employees or the public.

SECTION 7. IC 22-3-6-1, AS AMENDED BY P.L.202-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the context otherwise requires:

(a) "Employer" includes the state and any political subdivision, any municipal corporation within the state, any individual or the legal representative of a deceased individual, firm, association, limited liability company, or corporation or the receiver or trustee of the same,

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using the services of another for pay. A parent corporation and its subsidiaries shall each be considered joint employers of the corporation's, the parent's, or the subsidiaries' employees for purposes of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of employees shall each be considered joint employers of the employees provided by the lessor to the lessee for purposes of IC 22-3-2-6 and IC 22-3-3-31. If the employer is insured, the term includes the employer's insurer so far as applicable. However, the inclusion of an employer's insurer within this definition does not allow an employer's insurer to avoid payment for services rendered to an employee with the approval of the employer. The term also includes an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5.

(b) "Employee" means every person, including a minor, in the service of another, under any contract of hire or apprenticeship, written or implied, except one whose employment is both casual and not in the usual course of the trade, business, occupation, or profession of the employer.

(1) An executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, other than a municipal corporation or governmental subdivision or a charitable, religious, educational, or other nonprofit corporation, is an employee of the corporation under IC 22-3-2 through IC 22-3-6.

(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the

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owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and
- (C) they have written agreements with real estate brokers stating that they are not to be treated as employees for tax purposes.

(7) A person is an independent contractor in the construction trades and not an employee under IC 22-3-2 through IC 22-3-6 if the person is an independent contractor under the guidelines of the United States Internal Revenue Service.

(8) An owner-operator that provides a motor vehicle and the services of a driver under a written contract that is subject to IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor carrier is not an employee of the motor carrier for purposes of IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be covered and have the owner-operator's drivers covered under a worker's compensation insurance policy or authorized self-insurance that insures the motor carrier if the owner-operator pays the premiums as requested by the motor carrier. An election by an owner-operator under this subdivision does not terminate

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the independent contractor status of the owner-operator for any purpose other than the purpose of this subdivision.

(9) A member or manager in a limited liability company may elect to include the member or manager as an employee under IC 22-3-2 through IC 22-3-6 if the member or manager is actually engaged in the limited liability company business. If a member or manager makes this election, the member or manager must serve upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is:

(A) a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25; **or**

(B) a child less than eighteen (18) years of age who, at the time of the accident, is permitted to work in violation of IC 20-8.1-4-25.5;

the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation

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for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training

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program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

- (1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.
- (2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.
- (3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.
- (4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.
- (5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.
- (6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.
- (7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.
- (8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or

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less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

SECTION 8. IC 22-3-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) Every employer and every employee, except as stated in this chapter, shall comply with this chapter, requiring the employer and employee to pay and accept compensation for disablement or death by occupational disease arising out of and in the course of the employment, and shall be bound thereby, **except as provided in section 10(c) of this chapter.**

(b) This chapter does not apply to employees of municipal corporations in Indiana who are members of:

(1) the fire department or police department of any such municipality; and

(2) a firefighters' pension fund or a police officers' pension fund. However, if the common council elects to purchase and procure worker's occupational disease insurance to insure said employees with respect to medical benefits under this chapter, the medical provisions apply to members of the fire department or police department of any such municipal corporation who are also members of a firefighters' pension fund or a police officers' pension fund.

(c) When any municipal corporation purchases or procures worker's occupational disease insurance covering members of the fire department or police department who are also members of a firefighters' pension fund or a police officers' pension fund and pays the premium or premiums for the insurance, the payment of the premiums is a legal and allowable expenditure of funds of any municipal corporation.

(d) Except as provided in subsection (e), where the common council has procured worker's occupational disease insurance as provided under this section, any member of the fire department or police department employed in the city carrying the worker's occupational disease insurance under this section is limited to recovery of medical and surgical care, medicines, laboratory, curative and palliative agents and means, x-ray, diagnostic and therapeutic services to the extent that the services are provided for in the worker's occupational disease policy so procured by the city, and may not also recover in addition to that policy for the same benefits provided in IC 36-8-4.

(e) If the medical benefits provided under a worker's occupational disease policy procured by the common council terminate for any reason before the police officer or firefighter is fully recovered, the common council shall provide medical benefits that are necessary until the police officer or firefighter is no longer in need of medical care.

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(f) Nothing in this section affects the rights and liabilities of employees and employers had by them prior to April 1, 1963, under this chapter.

SECTION 9. IC 22-3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) **Except as provided in subsection (c)**, as used in this chapter, "occupational disease" means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where such diseases follow as an incident of an occupational disease as defined in this section.

(b) A disease arises out of the employment only if there is apparent to the rational mind, upon consideration of all of the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workers would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence.

(c) **In addition to subsections (a) and (b), in the event of a terrorist attack (as determined by the worker's compensation board) every employer shall pay and every employee shall accept compensation for occupational disease or death by occupational disease occurring while:**

- (1) the employee was engaged in the duties of employment at the time of the terrorist attack; or
- (2) the employee was traveling to or from the place of employment whether or not during working hours, and:
 - (A) had reached the employer's premises;
 - (B) had reached the area where the employee parks a motor vehicle; or
 - (C) was in such close proximity to the place of employment as to be injured or killed as a result of a terrorist attack that directly involved the employer's premises or adjacent areas, including, but not limited to, adjacent travel routes and parking garages.



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(d) Section 2 of this chapter and subsection (a) apply regardless of:

- (1) whether the employee's activities were a benefit to the employer at the time of the terrorist attack; or
- (2) whether the terrorist act occurred during the employee's:
 - (A) lunch; or
 - (B) rest; period.

SECTION 10. IC 22-3-7-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 21. (a) No compensation is allowed for any condition of physical or mental ill-being, disability, disablement, or death for which compensation is recoverable on account of accidental injury under chapters 2 through 6 of this article.

(b) No compensation is allowed for any disease or death knowingly self-inflicted by the employee, or due to:

- (1) ~~his~~ intoxication;
- (2) ~~his~~ commission of an offense; ~~his knowing failure to use a safety appliance;~~
- (3) ~~his~~ knowing failure to obey a reasonable written or printed rule of the employer which has been posted in a conspicuous position in the place of work **other than an order or regulation set forth in subsection (c)(2);** or
- (4) ~~his~~ knowing failure to perform any statutory duty.

The burden of proof is on the defendant.

(c) This subsection does not apply to compensation due to a school to work student under section 2.5(b)(2) of this chapter. Each payment of monetary compensation allowed under sections 11, 15, 16, and 19 of this chapter shall be reduced by fifteen percent (15%) for an occupational disease or a death resulting from an occupational disease caused in any degree by the employee's intentional:

- (1) failure to use a safety appliance furnished by the employer or required by the employer to be used by the employee; or**
- (2) failure to obey a lawful order or administrative regulation issued by:**
 - (A) the worker's compensation board; or**
 - (B) the employer;**

for the safety of the employees or the public.

SECTION 11. IC 22-4-15-1, AS AMENDED BY P.L.290-2001, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. (a) With respect to benefit periods established

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on and after July 6, 1980, an individual who has voluntarily left the individual's most recent employment without good cause in connection with the work or who was discharged from the individual's most recent employment for just cause is ineligible for ~~waiting period or~~ benefit rights for the week in which the disqualifying separation occurred and until the individual has earned remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(b) When it has been determined that an individual has been separated from employment under disqualifying conditions as outlined in this section, the maximum benefit amount of ~~his~~ **the individual's** current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction will be raised to the next higher even dollar amount. The maximum benefit amount may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(c) The disqualifications provided in this section shall be subject to the following modifications:

(1) An individual shall not be subject to disqualification because of separation from the individual's employment if:

(A) the individual left to accept with another employer previously secured permanent full-time work which offered reasonable expectation of continued covered employment and betterment of wages or working conditions; and thereafter was employed on said job;

(B) having been simultaneously employed by two (2) employers, the individual leaves one (1) such employer voluntarily without good cause in connection with the work but remains in employment with the second employer with a reasonable expectation of continued employment; or

(C) the individual left to accept recall made by a base period employer.

(2) An individual whose unemployment is the result of medically substantiated physical disability and who is involuntarily unemployed after having made reasonable efforts to maintain the employment relationship shall not be subject to disqualification under this section for such separation.

(3) An individual who left work to enter the armed forces of the

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United States shall not be subject to disqualification under this section for such leaving of work.

(4) An individual whose employment is terminated under the compulsory retirement provision of a collective bargaining agreement to which the employer is a party, or under any other plan, system, or program, public or private, providing for compulsory retirement and who is otherwise eligible shall not be deemed to have left the individual's work voluntarily without good cause in connection with the work. However, if such individual subsequently becomes reemployed and thereafter voluntarily leaves work without good cause in connection with the work, the individual shall be deemed ineligible as outlined in this section.

(5) An otherwise eligible individual shall not be denied benefits for any week because the individual is in training approved under Section 236(a)(1) of the Trade Act of 1974, nor shall the individual be denied benefits by reason of leaving work to enter such training, provided the work left is not suitable employment, or because of the application to any week in training of provisions in this law (or any applicable federal unemployment compensation law), relating to availability for work, active search for work, or refusal to accept work. For purposes of this subdivision, the term "suitable employment" means with respect to an individual, work of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the Trade Act of 1974), and wages for such work at not less than eighty percent (80%) of the individual's average weekly wage as determined for the purposes of the Trade Act of 1974.

(6) An individual is not subject to disqualification because of separation from the individual's employment if:

- (A) the employment was outside the individual's labor market;
- (B) the individual left to accept previously secured full-time work with an employer in the individual's labor market; and
- (C) the individual actually became employed with the employer in the individual's labor market.

(7) An individual who, but for the voluntary separation to move to another labor market to join a spouse who had moved to that labor market, shall not be disqualified for that voluntary separation, if the individual is otherwise eligible for benefits. Benefits paid to the spouse whose eligibility is established under this subdivision shall not be charged against the employer from

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whom the spouse voluntarily separated.

(8) An individual who is an affected employee (as defined in IC 22-4-43-1(1)) and is subject to the work sharing unemployment insurance program under IC 22-4-43 is not disqualified from participating in the work sharing unemployment insurance program for being an affected employee.

As used in this subsection, "labor market" means the area surrounding an individual's permanent residence, outside which the individual cannot reasonably commute on a daily basis. In determining whether an individual can reasonably commute under this subdivision, the department shall consider the nature of the individual's job.

(d) "Discharge for just cause" as used in this section is defined to include but not be limited to:

- (1) separation initiated by an employer for falsification of an employment application to obtain employment through subterfuge;
- (2) knowing violation of a reasonable and uniformly enforced rule of an employer;
- (3) unsatisfactory attendance, if the individual cannot show good cause for absences or tardiness;
- (4) damaging the employer's property through willful negligence;
- (5) refusing to obey instructions;
- (6) reporting to work under the influence of alcohol or drugs or consuming alcohol or drugs on employer's premises during working hours;
- (7) conduct endangering safety of self or coworkers; or
- (8) incarceration in jail following conviction of a misdemeanor or felony by a court of competent jurisdiction or for any breach of duty in connection with work which is reasonably owed an employer by an employee.

SECTION 12. IC 22-4-43 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 43. Work Sharing

Sec. 1. The following definitions apply throughout this chapter:

- (1) "Affected employee" means an individual who has been continuously on the payroll of an affected unit for at least three (3) months before the employing unit submits a work sharing plan.**
- (2) "Affected unit" means a specific plant, department, shift, or other definable unit of an employing unit:**



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- (A) that has at least two (2) employees; and
- (B) to which an approved work sharing plan applies.
- (3) "Approved work sharing plan" means a plan that satisfies the purpose set forth in section 2 of this chapter and has the approval of the commissioner.
- (4) "Commissioner" means the commissioner of workforce development appointed under IC 22-4.1-3-1.
- (5) "Employee association" means:
 - (A) an association that is a party to a collective bargaining agreement under which it may negotiate a work sharing plan; or
 - (B) an association authorized by all of its members to become a party to a work sharing plan.
- (6) "Normal weekly work hours" means the lesser of:
 - (A) the number of hours in a week that an employee customarily works for the regular employing unit; or
 - (B) forty (40) hours.
- (7) "Work sharing benefit" means benefits payable to an affected employee for work performed under an approved work sharing plan, including benefits payable to a federal civilian employee or former member of the armed forces under 5 U.S.C. 8500 et seq., but does not include benefits that are otherwise payable under this article.
- (8) "Work sharing employer" means an employing unit or employer association for which a work sharing plan has been approved.
- (9) "Work sharing plan" means a plan of an employing unit or employer association under which:
 - (A) normal weekly work hours of affected employees are reduced; and
 - (B) affected employees share the work that remains after the reduction.

Sec. 2. The work sharing unemployment insurance program seeks to:

- (1) preserve the jobs of employees and the work force of an employer during lowered economic activity by reduction in work hours or workdays rather than by a layoff of some employees while other employees continue their normal weekly work hours or workdays; and
- (2) ameliorate the adverse effect of reduction in business activity by providing benefits for the part of the normal weekly work hours or workdays in which an employee does



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not work.

Sec. 3. An employing unit or employee association that wishes to participate in the work sharing unemployment insurance program shall submit to the commissioner a written work sharing plan that the employing unit or representative of the employee association has signed.

Sec. 4. (a) Within fifteen (15) days after receipt of a work sharing plan, the commissioner shall give written approval or disapproval of the plan to the employing unit or employee association.

(b) The decision of the commissioner to disapprove a work sharing plan is final and may not be appealed.

(c) An employing unit or employee association may submit a new work sharing plan not less than fifteen (15) days after disapproval of a work sharing plan.

Sec. 5. The commissioner shall approve a work sharing plan that meets the following requirements:

- (1)** The work sharing plan must apply to:
 - (A)** at least ten percent (10%) of the employees in an affected unit; or
 - (B)** at least twenty (20) employees in an affected unit in which the work sharing plan applies equally to all affected employees.
- (2)** The normal weekly work hours of affected employees in the affected unit shall be reduced by at least ten percent (10%) but the reduction may not exceed fifty percent (50%) unless the fifty percent (50%) limit is waived by the commissioner.

Sec. 6. A work sharing plan must:

- (1)** identify the affected unit;
- (2)** identify each employee in the affected unit by:
 - (A)** name;
 - (B)** Social Security number; and
 - (C)** any other information that the commissioner requires;
- (3)** specify an expiration date that is not more than six (6) months after the effective date of the work sharing plan;
- (4)** specify the effect that the work sharing plan will have on the fringe benefits of each employee in the affected unit, including:
 - (A)** health insurance for hospital, medical, dental, and similar services;
 - (B)** retirement benefits under benefit pension plans as



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defined in the federal Employee Retirement Security Act (29 U.S.C. 1001 et seq.);

(C) holiday and vacation pay;

(D) sick leave; and

(E) similar advantages;

(5) certify that:

(A) each affected employee has been continuously on the payroll of the employing unit for three (3) months immediately before the date on which the employing unit or employer association submits the work sharing plan; and

(B) the total reduction in normal weekly work hours is in place of layoffs that would have:

(i) affected at least the number of employees specified in section 5(1) of this chapter; and

(ii) would have resulted in an equivalent reduction in work hours; and

(6) contain the written approval of:

(A) the collective bargaining agent for each collective bargaining agreement that covers any affected employee in the affected unit; or

(B) if there is not an agent, a representative of the employees or employee association in the affected unit.

Sec. 7. If a work sharing plan serves the work sharing employer as a transitional step to permanent staff reduction, the work sharing plan must contain a reemployment assistance plan for each affected employee that the work sharing employer develops with the commissioner.

Sec. 8. The work sharing employer shall agree to:

(1) submit reports that are necessary to administer the work sharing plan; and

(2) allow the department to have access to all records necessary to:

(A) verify the work sharing plan before its approval; and

(B) monitor and evaluate the application of the work sharing plan after its approval.

Sec. 9. (a) An approved work sharing plan may be modified if the modification meets the requirements for approval under section 6 of this chapter and the commissioner approves the modifications.

(b) An employing unit may add an employee to a work sharing plan when the employee has been continuously on the payroll for

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three (3) months.

(c) An approved modification of a work sharing plan may not change its expiration date.

Sec. 10. (a) An affected employee is eligible under section 12 of this chapter to receive work sharing benefits for each week in which the commissioner determines that the affected employee is:

- (1) able to work; and
- (2) available for more hours of work or full-time work for the worksharing employer.

(b) An affected employee who otherwise is eligible may not be denied work sharing benefits for lack of effort to secure work as set forth in IC 22-4-14-3 or for failure to apply for available suitable work as set forth in IC 22-4-15-2 from a person other than the work sharing employer.

(c) An affected employee shall apply for benefits under IC 22-4-17-1.

(d) An affected employee who otherwise is eligible for benefits is:

- (1) considered to be unemployed for the purpose of the work sharing unemployment insurance program; and
- (2) not subject to the requirements of IC 22-4-14-2.

Sec. 11. The weekly work sharing unemployment compensation benefit due to an affected worker is determined in STEP FOUR of the following formula:

STEP ONE: Determine the weekly benefit that would be due to the affected employee under IC 22-4-12-4.

STEP TWO: Determine the percentage of reduction in the employee's normal work hours as to those under the approved work sharing plan.

STEP THREE: Multiply the number determined in STEP ONE by the quotient determined in STEP TWO.

STEP FOUR: If the product determined under STEP THREE is not a multiple of one dollar (\$1), round down to the nearest lower multiple of one dollar (\$1).

Sec. 12. (a) An affected employee is eligible to receive not more than twenty-six (26) weeks of work sharing benefits during each benefit year.

(b) The total amount of benefits payable under IC 22-4-12-4 and work sharing benefits payable under this chapter may not exceed the total payable for the benefit year under IC 22-4-12-4(a).

Sec. 13. The board shall adopt rules under IC 4-22-2 applicable to partially unemployed workers for determining their weekly

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benefit amount due under this chapter, subject to IC 22-4-12-5(b).

Sec. 14. During a week in which an affected employee who otherwise is eligible for benefits does not work for the work sharing employer:

- (1) the individual shall be paid benefits in accordance with this chapter; and
- (2) the week does not count as a week for which a work sharing benefit is received.

Sec. 15. During a week in which an employee earns wages under an approved work sharing plan and other wages, the work sharing benefit shall be reduced by the same percentage that the combined wages are of wages for normal weekly work hours if the other wages:

- (1) exceed the wages earned under the approved work sharing plan; and
- (2) do not exceed ninety percent (90%) of the wages that the individual earns for normal weekly work hours.

This computation applies regardless of whether the employee earned the other wage from the work sharing employer or other employer.

Sec. 16. While an affected employee applies for or receives work sharing benefits, the affected employee is not eligible for:

- (1) extended benefits under IC 22-4-12-4; or
- (2) supplemental federal unemployment compensation.

Sec. 17. The commissioner may revoke approval of an approved work sharing plan for good cause, including:

- (1) conduct or an occurrence that tends to defeat the intent and effective operation of the approved work sharing plan;
- (2) failure to comply with an assurance in the approved work sharing plan;
- (3) unreasonable revision of a productivity standard of the affected unit; and
- (4) violation of a criterion on which the commissioner based the approval of the work sharing plan.

SECTION 13. [EFFECTIVE JULY 1, 2002] (a) Notwithstanding IC 22-4-43-13, as added by this act, the unemployment insurance board shall carry out the duties imposed upon it under IC 22-4-43-13, as added by this act, under interim written guidelines approved by the commissioner of workforce development.

(b) This SECTION expires on the earlier of the following:

- (1) The date rules are adopted under IC 22-4-43-13, as added



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by this act.

(2) December 31, 2003."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 71 as reprinted February 4, 2002.)

LIGGETT, Chair

Committee Vote: yeas 12, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 71 be amended to read as follows:

Page 8, between lines 28 and 29, begin a new paragraph and insert:
 "SECTION 7. IC 22-3-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 8. With respect to injuries occurring prior to April 1, 1951, causing temporary total disability for work, there shall be paid to the injured employee during such total disability for work a weekly compensation equal to fifty-five percent (55%) of **his the injured employee's** average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after April 1, 1951, and prior to July 1, 1971, causing temporary total disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of **his the injured employee's** average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, causing temporary total disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of **his the injured employee's** average weekly wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter**, a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of **his the injured employee's** average weekly wages up to one hundred and thirty-five dollars (\$135.00) average weekly wages, as defined in section 22 of this chapter, for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1976, causing temporary total disability or total permanent disability for work, there shall be paid to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of **his the injured employee's** average weekly wages, as defined in ~~IC 22-3-3-22~~ **section 22 of this chapter**, for a period not to exceed five hundred (500) weeks. **When an employee who has sustained a compensable injury returns to work and suffers a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of the disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in**

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section 22 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

SECTION 8. IC 22-3-3-13, AS AMENDED BY P.L.202-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice not later than October 1 in any year to:

- (1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and
- (2) each employer carrying the employer's own risk;

stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for



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temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment. **All entities liable for and paying an assessment under this subsection are entitled to a credit against the assessment for the payments made the same year on which the assessment was based. These payments must have been made to an employee who was injured before January 1, 2003, and who had a later period of disability entitling the employee to an increase in the average weekly wage, as set forth in section 8 of this chapter. Any credit due shall be computed by the following formula:**

STEP ONE: Determine the amount of compensation the employee actually received based on the average weekly wage as of the last day worked before the later period of disability.

STEP TWO: Determine the amount of compensation the employee would have received based on the average weekly wage at the time of the original compensable injury.

STEP THREE: Determine the greater of zero (0) or the result of:

(A) the STEP ONE amount; minus

(B) the STEP TWO amount.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the



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contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

- (1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or
- (2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by this section, as follows under subsection (h).

(h) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:



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- (1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and
- (2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(i) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

- (1) not later than January 31 each calendar year; and
- (2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment."

Page 12, after line 42, begin a new line block indented and insert:

"(5) In computing the average weekly wage for an employee who has sustained a compensable injury who has returned to work and has a later period of disability due to that injury after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of that disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in IC 22-3-3-22."

Page 16, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 12. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to occupational diseases occurring:

- (1) on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be:
 - (A) not more than one hundred thirty-five dollars (\$135); and
 - (B) not less than seventy-five dollars (\$75);
- (2) on and after July 1, 1976, and before July 1, 1977, the average



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weekly wages shall be considered to be:

- (A) not more than one hundred fifty-six dollars (\$156); and
- (B) not less than seventy-five dollars (\$75);
- (3) on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be:
 - (A) not more than one hundred eighty dollars (\$180); and
 - (B) not less than seventy-five dollars (\$75);
- (4) on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be:
 - (A) not more than one hundred ninety-five dollars (\$195); and
 - (B) not less than seventy-five dollars (\$75);
- (5) on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be:
 - (A) not more than two hundred ten dollars (\$210); and
 - (B) not less than seventy-five dollars (\$75);
- (6) on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be:
 - (A) not more than two hundred thirty-four dollars (\$234); and
 - (B) not less than seventy-five dollars (\$75); and
- (7) on and after July 1, 1984, and before July 1, 1985, the average weekly wages are considered to be:
 - (A) not more than two hundred forty-nine dollars (\$249); and
 - (B) not less than seventy-five dollars (\$75).
- (b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be:
 - (1) not more than two hundred sixty-seven dollars (\$267); and
 - (2) not less than seventy-five dollars (\$75).
- (c) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be:
 - (1) not more than two hundred eighty-five dollars (\$285); and
 - (2) not less than seventy-five dollars (\$75).
- (d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:
 - (1) not more than three hundred eighty-four dollars (\$384); and
 - (2) not less than seventy-five dollars (\$75).
- (e) In computing compensation for temporary total disability,



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temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

(f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

(j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

(k) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:
 - (A) not more than six hundred seventy-two dollars (\$672); and
 - (B) not less than seventy-five dollars (\$75);

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(2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

(A) not more than seven hundred two dollars (\$702); and

(B) not less than seventy-five dollars (\$75);

(3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:

(A) not more than seven hundred thirty-two dollars (\$732); and

(B) not less than seventy-five dollars (\$75);

(4) with respect to occupational diseases occurring on and after July 1, 2000, and before July 1, 2001:

(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to disablements occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822); and

(B) not less than seventy-five dollars (\$75); and

(6) with respect to disablements occurring on and after July 1, 2002:

(A) not more than eight hundred eighty-two dollars (\$882); and

(B) not less than seventy-five dollars (\$75).

(l) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:

(1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;

(2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;

(3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;

(4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;

(5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;

(6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and

(7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which

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shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1986, and before July 1, 1988, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1988, and before July 1, 1989, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) The maximum compensation with respect to disability or death occurring on and after July 1, 1989, and before July 1, 1990, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

(o) The maximum compensation with respect to disability or death occurring on and after July 1, 1990, and before July 1, 1991, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) The maximum compensation with respect to disability or death occurring on and after July 1, 1991, and before July 1, 1992, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(r) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(s) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall

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be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, two hundred ninety-four thousand dollars (\$294,000).

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages

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as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. If by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages for the employee, the employee's average weekly wages shall be considered to be the average weekly amount that, during the fifty-two (52) weeks before the date of disability, was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee instead of wages or a specified part of the wage contract, they shall be considered a part of the employee's earnings.

(w) In computing the average weekly wage for an employee who has sustained a compensable occupational disease who has returned to work and has a later period of disability due to that occupational disease after July 1, 2002, the average weekly wage for that period of disability shall be determined based on the average weekly wage at the time of that disability subject to the maximum average weekly wage in effect as of the last day worked, computed as set forth in this section.

(x) The provisions of this article may not be construed to result in

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an award of benefits in which the number of weeks paid or to be paid for temporary total disability, temporary partial disability, or permanent total disability benefits combined exceeds five hundred (500) weeks. This section shall not be construed to prevent a person from applying for an award under IC 22-3-3-13. However, in case of permanent total disability resulting from a disablement occurring on or after January 1, 1998, the minimum total benefit shall not be less than seventy-five thousand dollars (\$75,000)."

Page 24, delete line 39.

Renumber all SECTIONS consecutively.

(Reference is to ESB 71 as printed February 22, 2002.)

STILWELL

HOUSE MOTION

Mr. Speaker: I move that Engrossed Senate Bill 71 be amended to read as follows:

Page 8, line 9, after "appliance;" insert "**or**".

Page 8, line 10, strike "knowing failure to obey a reasonable written or printed".

Page 8, strike line 11.

Page 8, line 12, strike "position in the place of work".

Page 8, line 12, delete "other than an order or regulation".

Page 8, line 13, delete "set forth in subsection (b)(2);".

Page 8, line 13, strike "or".

Page 8, line 14, delete "(5)".

Page 8, line 14, strike "duty." and insert "**duty, other than duties relating to safety equipment and rules as set forth in subsection (b).**".

Page 8, strike line 15.

Page 8, line 21, delete "in any degree".

Page 8, line 22, delete "a".

Page 8, line 22, delete "appliance" and insert "**equipment**".

Page 8, line 23, before "required" delete "or" and insert "**and**".

Page 8, delete lines 24 through 28, begin a new line block indented and insert:

"(2) failure to obey a written or printed rule of the employer that has been posted in a conspicuous position in the place of work."



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Page 8, between lines 28 and 29, begin a new paragraph and insert:
"(c) The burden of proof is on the defendant."

SECTION 7. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2002]: Sec. 7. (a) Compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work beginning with the eighth (8th) day of such disability except for medical benefits provided in section 4 of the chapter. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(b) The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

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(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to any employment;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable employment under section 11 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowed under section 22 of this chapter; ~~or~~
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury; **or**
- (6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 33 of this chapter.**

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

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(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 8. IC 22-3-3-10, AS AMENDED BY P.L.31-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. (a) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred dollars (\$100) average weekly wages, for the periods stated for the injuries. With respect to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of his average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not to exceed fifty-two (52) weeks on account of the injury, a weekly compensation

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of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

(1) Amputation: For the loss by separation of the thumb, sixty (60) weeks, of the index finger forty (40) weeks, of the second finger thirty-five (35) weeks, of the third or ring finger thirty (30) weeks, of the fourth or little finger twenty (20) weeks, of the hand by separation below the elbow joint two hundred (200) weeks, or the arm above the elbow two hundred fifty (250) weeks, of the big toe sixty (60) weeks, of the second toe thirty (30) weeks, of the third toe twenty (20) weeks, of the fourth toe fifteen (15) weeks, of the fifth or little toe ten (10) weeks, and for loss occurring before April 1, 1959, by separation of the foot below the knee joint one hundred fifty (150) weeks and of the leg above the knee joint two hundred (200) weeks; for loss occurring on and after April 1, 1959, by separation of the foot below the knee joint, one hundred seventy-five (175) weeks and of the leg above the knee joint two hundred twenty-five (225) weeks. The loss of more than one (1) phalange of a thumb or toes shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire

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finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) the period for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger, shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) For the loss by separation of both hands or both feet or the total sight of both eyes, or any two (2) such losses in the same accident, five hundred (500) weeks.

(3) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred seventy-five (175) weeks.

(4) For the permanent and complete loss of hearing in one (1) ear, seventy-five (75) weeks, and in both ears, two hundred (200) weeks.

(5) For the loss of one (1) testicle, fifty (50) weeks; for the loss of both testicles, one hundred fifty (150) weeks.

(b) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in lieu of all other compensation on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to April 1, 1955, the employee shall receive in lieu of all other compensation on account of the injuries a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1955, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after July 1, 1971, and before July 1, 1977, the employee shall receive in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injuries, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such injuries respectively. With respect



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to injuries in the following schedule occurring on and after July 1, 1977, and before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not exceeding fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages not to exceed one hundred twenty-five dollars (\$125) average weekly wages for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

- (1) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid for the same period as for the loss thereof by separation.
- (2) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of

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such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(3) For injuries resulting in total permanent disability, five hundred (500) weeks.

(4) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then in such event compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses, plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(5) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid for a period proportional to the degree of such permanent reduction.

(6) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(7) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(c) With respect to injuries in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the injury, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the injury occurred.

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by

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separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; by separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, and for the loss by separation of any of the body parts described in subdivision (3), (5), or (8), on or after July 1, 1999, the dollar values per degree applying on the date of the injury as described in subsection (d) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation, thirty-five (35) degrees of permanent impairment.

(6) For the reduction of vision to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.



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(7) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(8) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(9) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(10) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(11) For injuries resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(12) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(13) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(14) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(15) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation

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board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(d) Compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the injury determined under subsection (c) and the following:

(1) With respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to injuries occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to injuries occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree;

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for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to injuries occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to injuries occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to injuries occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to injuries occurring on and after July 1, 2001, **and before July 1, 2002**, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(9) With respect to injuries occurring on and after July 1, 2002, and before July 1, 2003, for each degree of permanent

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impairment from one (1) to ten (10), two thousand fifty-six dollars (\$2,056) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand seven hundred six dollars (\$2,706) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred six dollars (\$3,306) per degree; for each degree of permanent impairment above fifty (50), three thousand nine hundred six dollars (\$3,906) per degree. (10) With respect to injuries occurring on and after July 1, 2003, for each degree of permanent impairment from one (1) to ten (10), two thousand four hundred six dollars (\$2,406) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), three thousand eighty-one dollars (\$3,081) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand seven hundred eighty-one dollars (\$3,781) per degree; for each degree of permanent impairment above fifty (50), four thousand five hundred thirty-one dollars (\$4,531) per degree.

(e) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (c) and (d) shall not exceed the following:

- (1) With respect to injuries occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).
- (2) With respect to injuries occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).
- (3) With respect to injuries occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).
- (4) With respect to injuries occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).
- (5) With respect to injuries occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).
- (6) With respect to injuries occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).
- (7) With respect to injuries occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).
- (8) With respect to injuries occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).
- (9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).
- (10) With respect to injuries occurring on or after July 1, 2002, **and before July 1, 2003**, eight hundred eighty-two dollars (\$882).



(11) With respect to injuries occurring on or after July 1, 2003, nine hundred forty-eight dollars (\$948).

SECTION 9. IC 22-3-3-13, AS AMENDED BY P.L.202-2001, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of; one (1) hand; one (1) arm; one (1) foot; one (1) leg; or one (1) eye; and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of; another such member or eye; the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund; and created in the manner described in subsection (c):

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under section 4(e) of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period; the board shall send notice not later than October 1 in any year to:

- (1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and
- (2) each employer carrying the employer's own risk;

stating that an assessment is necessary: After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk; shall, within thirty (30) days of the board sending notice under this subsection; pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection; the board may consider payments for temporary total disability; temporary partial disability; permanent total



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impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance

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remaining in the account at the end of any fiscal year shall not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section; and shall be paid for that purpose by the treasurer of state upon award or order of the board.

~~(g)~~ (a) If an employee who is entitled to compensation under IC 22-3-2 through IC 22-3-6 either:

- (1) exhausts the maximum benefits under section 22 of this chapter without having received the full amount of award granted to the employee under section 10 of this chapter; or
- (2) exhausts the employee's benefits under section 10 of this chapter;

then such employee may apply to the board, who may award the employee compensation from the second injury fund established by ~~this section~~, **IC 22-3-4-15**, as follows under subsection ~~(h)~~: **(b)**.

~~(h)~~ (b) An employee who has exhausted the employee's maximum benefits under section 10 of this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's injury, not to exceed the maximum then applicable under section 22 of this chapter, for a period of not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

- (1) that the employee is totally and permanently disabled from causes and conditions of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and
- (2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

~~(i)~~ (c) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the board for successive periods not to exceed one hundred fifty (150) weeks each. The provisions of this section apply only to injuries occurring subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

~~(j)~~ All insurance carriers subject to an assessment under this section are required to provide to the board:

- ~~(1)~~ not later than January 31 each calendar year; and
- ~~(2)~~ not later than thirty (30) days after a change occurs;



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the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 10. IC 22-3-3-22, AS AMENDED BY P.L.31-2000, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. (a) In computing the compensation under this law with respect to injuries occurring on and after April 1, 1963, and prior to April 1, 1965, the average weekly wages shall be considered to be not more than seventy dollars (\$70) nor less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1965, and prior to April 1, 1967, the average weekly wages shall be considered to be not more than seventy-five dollars (\$75) and not less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1967, and prior to April 1, 1969, the average weekly wages shall be considered to be not more than eighty-five dollars (\$85) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1969, and prior to July 1, 1971, the average weekly wages shall be considered to be not more than ninety-five dollars (\$95) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, the average weekly wages shall be considered to be: (A) Not more than: (1) one hundred dollars (\$100) if no dependents; (2) one hundred five dollars (\$105) if one (1) dependent; (3) one hundred ten dollars (\$110) if two (2) dependents; (4) one hundred fifteen dollars (\$115) if three (3) dependents; (5) one hundred twenty dollars (\$120) if four (4) dependents; and (6) one hundred twenty-five dollars (\$125) if five (5) or more dependents; and (B) Not less than thirty-five dollars (\$35). In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be (A) not more than one hundred thirty-five dollars (\$135), and (B) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall in no case exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability and total permanent disability under this law with respect to injuries occurring on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be (1) not more than one hundred fifty-six dollars (\$156) and (2) not less than seventy-five dollars (\$75). However, the weekly

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compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be (1) not more than one hundred eighty dollars (\$180); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable may not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be (1) not more than one hundred ninety-five dollars (\$195), and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be (1) not more than two hundred ten dollars (\$210), and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be (1) not more than two hundred thirty-four dollars (\$234) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1984, and before July 1, 1985, the average weekly wages are considered to be (1) not more than two hundred forty-nine dollars (\$249) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be (1) not more than two hundred sixty-seven dollars (\$267) and (2) not less than seventy-five

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dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be (1) not more than two hundred eighty-five dollars (\$285) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be (1) not more than three hundred eighty-four dollars (\$384) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be (1) not more than four hundred eleven dollars (\$411) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be (1) not more than four hundred forty-one dollars (\$441) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be (1) not more than four hundred ninety-two dollars (\$492) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries

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occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be (1) not more than five hundred forty dollars (\$540) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be (1) not more than five hundred ninety-one dollars (\$591) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be (1) not more than six hundred forty-two dollars (\$642) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to injuries occurring on and after July 1, 1997, and before July 1, 1998:
 - (A) not more than six hundred seventy-two dollars (\$672); and
 - (B) not less than seventy-five dollars (\$75);
- (2) with respect to injuries occurring on and after July 1, 1998, and before July 1, 1999:
 - (A) not more than seven hundred two dollars (\$702); and
 - (B) not less than seventy-five dollars (\$75);
- (3) with respect to injuries occurring on and after July 1, 1999, and before July 1, 2000:
 - (A) not more than seven hundred thirty-two dollars (\$732); and
 - (B) not less than seventy-five dollars (\$75);
- (4) with respect to injuries occurring on and after July 1, 2000, and before July 1, 2001:
 - (A) not more than seven hundred sixty-two dollars (\$762); and
 - (B) not less than seventy-five dollars (\$75);
- (5) with respect to injuries occurring on and after July 1, 2001,



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and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822);
and

(B) not less than seventy-five dollars (\$75); ~~and~~

(6) with respect to injuries occurring on and after July 1, 2002,
and before July 1, 2003:

(A) not more than eight hundred eighty-two dollars (\$882);
and

(B) not less than seventy-five dollars (\$75); ~~and~~

**(7) with respect to injuries occurring on and after July 1,
2003:**

**(A) not more than nine hundred forty-eight dollars (\$948);
and**

(B) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(c) For the purpose of this section only and with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, only, the term "dependent" as used in this section shall mean persons defined as presumptive dependents under section 19 of this chapter, except that such dependency shall be determined as of the date of the injury to the employee.

(d) With respect to any injury occurring on and after April 1, 1955, and prior to April 1, 1957, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provisions of this law or under any combination of its provisions shall not exceed twelve thousand five hundred dollars (\$12,500) in any case. With respect to any injury occurring on and after April 1, 1957, and prior to April 1, 1963, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed fifteen thousand dollars (\$15,000) in any case. With respect to any injury occurring on and after April 1, 1963, and prior to April 1, 1965, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed sixteen thousand five hundred dollars (\$16,500) in any case. With respect to any injury occurring on and after April 1, 1965, and prior to April 1, 1967, the maximum compensation exclusive of medical benefits which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed twenty thousand dollars (\$20,000) in any case. With respect to any injury occurring on and after April 1, 1967,

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and prior to July 1, 1971, the maximum compensation exclusive of medical benefits which shall be paid for an injury under any provision of this law or any combination of provisions shall not exceed twenty-five thousand dollars (\$25,000) in any case. With respect to any injury occurring on and after July 1, 1971, and prior to July 1, 1974, the maximum compensation exclusive of medical benefits which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed thirty thousand dollars (\$30,000) in any case. With respect to any injury occurring on and after July 1, 1974, and before July 1, 1976, the maximum compensation exclusive of medical benefits which shall be paid for an injury under any provision of this law or any combination of provisions shall not exceed forty-five thousand dollars (\$45,000) in any case. With respect to an injury occurring on and after July 1, 1976, and before July 1, 1977, the maximum compensation, exclusive of medical benefits, which shall be paid for any injury under any provision of this law or any combination of provisions shall not exceed fifty-two thousand dollars (\$52,000) in any case. With respect to any injury occurring on and after July 1, 1977, and before July 1, 1979, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provision of this law or any combination of provisions may not exceed sixty thousand dollars (\$60,000) in any case. With respect to any injury occurring on and after July 1, 1979, and before July 1, 1980, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed sixty-five thousand dollars (\$65,000) in any case. With respect to any injury occurring on and after July 1, 1980, and before July 1, 1983, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed seventy thousand dollars (\$70,000) in any case. With respect to any injury occurring on and after July 1, 1983, and before July 1, 1984, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed seventy-eight thousand dollars (\$78,000) in any case. With respect to any injury occurring on and after July 1, 1984, and before July 1, 1985, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed eighty-three thousand dollars (\$83,000) in any case. With respect to any injury occurring on and after July 1, 1985, and before July 1, 1986, the maximum compensation, exclusive of medical benefits, which may

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be paid for an injury under any provisions of this law or any combination of provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. With respect to any injury occurring on and after July 1, 1986, and before July 1, 1988, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. With respect to any injury occurring on and after July 1, 1988, and before July 1, 1989, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

With respect to any injury occurring on and after July 1, 1989, and before July 1, 1990, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

With respect to any injury occurring on and after July 1, 1990, and before July 1, 1991, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

With respect to any injury occurring on and after July 1, 1991, and before July 1, 1992, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

With respect to any injury occurring on and after July 1, 1992, and before July 1, 1993, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

With respect to any injury occurring on and after July 1, 1993, and before July 1, 1994, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

With respect to any injury occurring on and after July 1, 1994, and before July 1, 1997, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

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(e) The maximum compensation, exclusive of medical benefits, **subject to IC 22-3-2-8**, that may be paid for an injury under any provision of this law or any combination of provisions may not exceed the following amounts in any case:

(1) With respect to an injury occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to an injury occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to an injury occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to an injury occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to an injury occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to an injury occurring on and after July 1, 2002, **and before July 1, 2003**, two hundred ninety-four thousand dollars (\$294,000).

(7) With respect to an injury occurring on or after July 1, 2003, the total of one hundred twenty-five (125) weeks of temporary total disability compensation as set forth in section 8 of this chapter plus one hundred (100) degrees of permanent partial disability as set forth in section 10 of this chapter.

SECTION 11. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 33. (a) If an employee:**

(1) receives an injury that results in a temporary total disability or a temporary partial disability; and

(2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury; the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to the amount determined

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under STEP FOUR of the following formula:

STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's injury, if any.

STEP TWO: Determine the employee's average weekly earnings from employment before the employee's injury.

STEP THREE: Determine the greater of:

- (A) the STEP TWO result minus the STEP ONE result; or
- (B) zero (0).

STEP FOUR: Determine the lesser of:

- (A) the STEP THREE result; or
- (B) with respect to injuries occurring on and after:
 - (1) July 1, 2002, and before July 1, 2003, eight hundred eighty-two dollars (\$882); or
 - (2) July 1, 2003, nine hundred forty-eight dollars (\$948).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

- (1) an explanation of the limitations or restrictions placed on the employee;
- (2) the amount of disabled from trade compensation the employee has been awarded; and
- (3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

SECTION 12. IC 22-3-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 10. In all proceedings before the worker's compensation board or in a court under IC 22-3-2 through IC 22-3-6, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court. **Prejudgment interest shall be awarded at a rate of eight percent (8%) per year accruing from the date of filing of the application of adjustment of claim as determined under section 5(a) of this chapter.**

SECTION 13. IC 22-3-4-15 IS ADDED TO THE INDIANA CODE



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AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 15.(a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause:

(1) had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident or exposure becomes permanently and totally disabled by reason of the loss, or loss of, another such member or eye; or

(2) has become impaired from an occupational disease and subsequently has become permanently and totally impaired from a second occupational disease;

the employer shall be liable only for the compensation payable for such second injury or impairment. However, in addition to such compensation and after the completion of the payment, the employee shall be paid the remainder of the compensation that is due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under IC 22-3-3-4(e), continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries or occupational disease to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk;

stating that an assessment is necessary. The board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries or occupational disease to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount equal to five hundred thousand dollars (\$500,000) plus the recommended funding level under subsection (d). For purposes of calculating the assessment under

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this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board shall not consider payments for medical benefits in calculating an assessment under this subsection. When on or before October 1 of any year the amount to the credit of the fund is less than five hundred thousand dollars (\$500,000) greater than the recommended funding level under subsection (d), the board shall assess an amount equal to five hundred thousand dollars (\$500,000) plus the recommended funding level of the total amount of all compensation paid to employees or their beneficiaries under IC 22-3-2 through IC 22-3-7 for the calendar years preceding that date to be paid into the fund.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. The actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the computation of agent commissions or premium taxes. However, an insurer may cancel a worker's compensation policy for nonpayment of the premium surcharge. A cancellation under this subsection must be carried out under the statutes applicable to the nonpayment of premiums.

(f) The sums shall be paid by the board to the treasurer of state, to be deposited in a special account known as the second injury fund. The funds are not a part of the general fund of the state. Any balance remaining in the account at the end of any fiscal year shall

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not revert to the general fund. The funds shall be used only for the payment of awards of compensation and expense of medical examinations or treatment made and ordered by the board and chargeable against the fund pursuant to this section, and shall be paid for that purpose by the treasurer of state upon award or order of the board.

(g) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment."

Page 16, between lines 2 and 3, begin a new paragraph and insert:

"SECTION 17. IC 22-3-7-16, AS AMENDED BY P.L.1-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier

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that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to work;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 20 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; ~~or~~
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease; **or**
- (6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 16.5 of this chapter.**

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent



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medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

(e) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before July 1, 1976, from occupational disease resulting in temporary total

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disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(f) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the later period shall be included as part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1974, from

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occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which ~~he~~ **the employee** is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(g) For disabilities occurring on and after April 1, 1951, and prior to April 1, 1955, from occupational disease in the following schedule, the employee shall receive in lieu of all other compensation, on account of such disabilities, a weekly compensation of sixty percent (60%) of the employee's average weekly wage; for disabilities occurring on and after April 1, 1955, and prior to July 1, 1971, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages.

For disabilities occurring on and after July 1, 1971, and before July 1, 1977, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of ~~his~~ **the employee's** average weekly wages not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such disabilities respectively.

For disabilities occurring on and after July 1, 1977, and before July 1, 1979, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of the occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1979, and before July 1, 1988, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding fifty-two (52) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average



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weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1988, and before July 1, 1989, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1989, and before July 1, 1990, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half (1/2) the finger and compensation shall be paid for

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one-half (1/2) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this

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amount of compensation shall be deducted from any compensation due for permanent disfigurement.

With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent ($66\frac{2}{3}\%$) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection (h) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half ($1/2$) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third

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(1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed

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an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(h) With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection (d) and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven

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(11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to disablements occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to disablements occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of

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permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, **and before July 1, 2002**, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(9) With respect to disablements occurring on and after July 1, 2002, and before July 1, 2003, for each degree of permanent impairment from one (1) to ten (10), two thousand fifty-six dollars (\$2,056) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), two thousand seven hundred six dollars (\$2,706) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand three hundred six dollars (\$3,306) per degree; for each degree of permanent impairment above fifty (50), three thousand nine hundred six dollars (\$3,906) per degree.
(10) With respect to disablements occurring on and after July 1, 2003, for each degree of permanent impairment from one (1) to ten (10), two thousand four hundred six dollars (\$2,406) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), three thousand eighty-one dollars (\$3,081) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), three thousand seven hundred eighty-one dollars (\$3,781) per degree; for each degree of permanent impairment above fifty (50), four thousand five hundred thirty-one dollars (\$4,531) per degree.

(i) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (g) and (h) shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars



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(\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to ~~injuries~~ **disablements** occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to ~~injuries~~ **disablements** occurring on or after July 1, 2002, **and before July 1, 2003**, eight hundred eighty-two dollars (\$882).

(11) With respect to disablements occurring on or after July 1, 2003, nine hundred forty-eight dollars (\$948).

(j) If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity ~~procured for him~~, ~~he~~ **the employee** shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(k) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he~~ **the employee** suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such



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previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(l) If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, ~~he the~~ **the employee** shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (g)(1), (g)(4), (g)(5), (g)(8), or (g)(9); but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter.

(m) If an employee receives a permanent disability from occupational disease such as specified in subsection (g)(1), (g)(4), (g)(5), (g)(8), or (g)(9) after having sustained another such permanent disability in the same employment the employee shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation and, when such previous and subsequent permanent disabilities, in combination result in total permanent disability or permanent total impairment, compensation shall be payable for such permanent total disability or impairment, but payments made for the previous disability or impairment shall be deducted from the total payment of compensation due.

(n) When an employee has been awarded or is entitled to an award of compensation for a definite period under this chapter for disability from occupational disease, which disablement occurs on and after April 1, 1951, and prior to April 1, 1963, and such employee dies from any other cause than such occupational disease, payment of the unpaid balance of such compensation, not exceeding three hundred (300) weeks, shall be made to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter, and compensation, not exceeding five hundred (500) weeks, shall be made



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to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter. When an employee has been awarded or is entitled to an award of compensation for a definite period from an occupational disease wherein disablement occurs on and after April 1, 1963, and such employee dies from other causes than such occupational disease, payment of the unpaid balance of such compensation not exceeding three hundred fifty (350) weeks shall be paid to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter and compensation, not exceeding five hundred (500) weeks shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter.

(o) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(p) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(q) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars (\$100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars (\$100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.

(r) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(s) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or

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symptoms proven, not within the physical or mental control of the employee himself.

SECTION 18. IC 22-3-7-16.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 16.1. (a) On or after January 1, 2003, if an employee who is entitled to compensation under this chapter either:**

(1) exhausts the maximum benefits under this chapter without having received the full amount of award granted to the employee under this chapter; or

(2) exhausts the employee's benefits under this chapter;

then the employee may apply to the worker's compensation board, who may award the employee compensation from the second injury fund under IC 22-3-4-15, subject to subsection (b).

(b) An employee who has exhausted the employee's maximum benefits under this chapter may be awarded additional compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wage at the time of the employee's disablement from occupational disease, not to exceed the maximum applicable under this chapter for a period not to exceed one hundred fifty (150) weeks upon competent evidence sufficient to establish:

(1) that the employee is totally and permanently disabled from an occupational disease of which there are or have been objective conditions and symptoms proven that are not within the physical or mental control of the employee; and

(2) that the employee is unable to support the employee in any gainful employment, not associated with rehabilitative or vocational therapy.

(c) The additional award may be renewed during the employee's total and permanent disability after appropriate hearings by the worker's compensation board for successive periods not to exceed one hundred fifty (150) weeks each.

SECTION 19. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 16.5. (a) If an employee:**

(1) suffers an occupational disease that results in a temporary total disability or a temporary partial disability; and

(2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's occupational disease;

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the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

- (1) fifty-two (52) consecutive weeks; or
- (2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to the amount determined under STEP FOUR of the following formula:

STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's occupational disease, if any.

STEP TWO: Determine the employee's average weekly earnings from employment before the employee's occupational disease.

STEP THREE: Determine the greater of:

- (A) the STEP TWO result minus the STEP ONE result; or
- (B) zero (0).

STEP FOUR: Determine the lesser of:

- (A) the STEP THREE result; or
- (B) with respect to occupational diseases occurring on and after:
 - (1) July 1, 2002, and before July 1, 2003, eight hundred eighty-two dollars (\$882); or
 - (2) July 1, 2003, nine hundred forty-eight dollars (\$948).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

- (1) an explanation of the limitations or restrictions placed on the employee;
- (2) the amount of disabled from trade compensation the employee has been awarded; and
- (3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing

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a copy of the notice required under subsection (d) with the board.

SECTION 20. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 19. (a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to occupational diseases occurring:

(1) on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be:

(A) not more than one hundred thirty-five dollars (\$135); and

(B) not less than seventy-five dollars (\$75);

(2) on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be:

(A) not more than one hundred fifty-six dollars (\$156); and

(B) not less than seventy-five dollars (\$75);

(3) on and after July 1, 1977, and before July 1, 1979, the average weekly wages are considered to be:

(A) not more than one hundred eighty dollars (\$180); and

(B) not less than seventy-five dollars (\$75);

(4) on and after July 1, 1979, and before July 1, 1980, the average weekly wages are considered to be:

(A) not more than one hundred ninety-five dollars (\$195); and

(B) not less than seventy-five dollars (\$75);

(5) on and after July 1, 1980, and before July 1, 1983, the average weekly wages are considered to be:

(A) not more than two hundred ten dollars (\$210); and

(B) not less than seventy-five dollars (\$75);

(6) on and after July 1, 1983, and before July 1, 1984, the average weekly wages are considered to be:

(A) not more than two hundred thirty-four dollars (\$234); and

(B) not less than seventy-five dollars (\$75); and

(7) on and after July 1, 1984, and before July 1, 1985, the average weekly wages are considered to be:

(A) not more than two hundred forty-nine dollars (\$249); and

(B) not less than seventy-five dollars (\$75).

(b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be:

(1) not more than two hundred sixty-seven dollars (\$267); and

(2) not less than seventy-five dollars (\$75).

(c) In computing compensation for temporary total disability,

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temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be:

- (1) not more than two hundred eighty-five dollars (\$285); and
- (2) not less than seventy-five dollars (\$75).

(d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:

- (1) not more than three hundred eighty-four dollars (\$384); and
- (2) not less than seventy-five dollars (\$75).

(e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

(f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

(j) In computing compensation for temporary total disability,

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temporary partial disability and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

(k) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:

- (A) not more than six hundred seventy-two dollars (\$672); and
 - (B) not less than seventy-five dollars (\$75);

- (2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

- (A) not more than seven hundred two dollars (\$702); and
 - (B) not less than seventy-five dollars (\$75);

- (3) with respect to occupational diseases occurring on and after July 1, 1999, and before July 1, 2000:

- (A) not more than seven hundred thirty-two dollars (\$732); and

- (B) not less than seventy-five dollars (\$75);

- (4) with respect to occupational diseases occurring on and after July 1, 2000, and before July 1, 2001:

- (A) not more than seven hundred sixty-two dollars (\$762); and
 - (B) not less than seventy-five dollars (\$75);

- (5) with respect to ~~disablements~~ **occupational diseases** occurring on and after July 1, 2001, and before July 1, 2002:

- (A) not more than eight hundred twenty-two dollars (\$822); and

- (B) not less than seventy-five dollars (\$75); ~~and~~

- (6) with respect to ~~disablements~~ **occupational diseases** occurring on and after July 1, 2002, **and before July 1, 2003:**

- (A) not more than eight hundred eighty-two dollars (\$882); and

- (B) not less than seventy-five dollars (\$75); **and**

- (7) with respect to occupational diseases occurring on and after July 1, 2003:**

- (A) not more than nine hundred forty-eight dollars (\$948); and**

- (B) not less than seventy-five dollars (\$75).**

(l) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this

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chapter with respect to disability or death occurring:

- (1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;
- (2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;
- (3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;
- (4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;
- (5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;
- (6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and
- (7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1986, and before July 1, 1988, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1988, and before July 1, 1989, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) The maximum compensation with respect to disability or death occurring on and after July 1, 1989, and before July 1, 1990, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

(o) The maximum compensation with respect to disability or death occurring on and after July 1, 1990, and before July 1, 1991, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) The maximum compensation with respect to disability or death occurring on and after July 1, 1991, and before July 1, 1992, that shall



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be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(r) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(s) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(t) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter, **subject to section 21 of this chapter**, may not exceed the following amounts in any case:

- (1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).
- (2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).
- (3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).
- (4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).
- (5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).
- (6) With respect to disability or death occurring on and after July



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1, 2002, and before July 1, 2003, two hundred ninety-four thousand dollars (\$294,000).

(7) With respect to a disability or death occurring on or after July 1, 2003, the total of one hundred twenty-five (125) weeks of temporary total disability compensation plus one hundred (100) degrees of permanent partial impairment, both as set forth in section 16 of this chapter.

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of



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dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. If by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages for the employee, the employee's average weekly wages shall be considered to be the average weekly amount that, during the fifty-two (52) weeks before the date of disability, was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee instead of wages or a specified part of the wage contract, they shall be considered a part of the employee's earnings.

(w) The provisions of this article may not be construed to result in an award of benefits in which the number of weeks paid or to be paid for temporary total disability, temporary partial disability, or permanent total disability benefits combined exceeds five hundred (500) weeks. This section shall not be construed to prevent a person from applying for an award under IC 22-3-3-13. However, in case of permanent total disability resulting from a disablement occurring on or after January 1, 1998, the minimum total benefit shall not be less than seventy-five thousand dollars (\$75,000)."

Page 16, line 12, after "offense;" insert "**or**".

Page 16, line 14, strike "knowing failure to obey a reasonable written or printed".

Page 16, strike line 15.

Page 16, line 16, strike "position in the place of work".

Page 16, line 16, delete "other than an order or regulation".

Page 16, line 17, delete "set forth in subsection (c)(2);".

Page 16, line 17, strike "or".

Page 16, line 18, delete "(4)".

Page 16, run in lines 14 through 18.

Page 16, line 18, strike "duty." and insert "**duty, other than duties relating to safety equipment and rules as set forth in subsection (b).**".

Page 16, strike line 19.

Page 16, line 25, delete "in any degree".

Page 16, line 27, delete "a".

Page 16, line 27, delete "appliance" and insert "**equipment**".

Page 16, delete lines 29 through 33, begin a new line block indented

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and insert:

"(2) failure to obey a reasonable written or printed rule of the employer which has been posed in a conspicuous position in the place of work."

Page 16, between lines 33 and 34, begin a new paragraph and insert:
"(d) The burden of proof is on the defendant."

SECTION 22. IC 22-3-7-27, AS AMENDED BY P.L.235-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 27. (a) If the employer and the employee or the employee's dependents disagree in regard to the compensation payable under this chapter, or, if they have reached such an agreement, which has been signed by them, filed with and approved by the worker's compensation board, and afterward disagree as to the continuance of payments under such agreement, or as to the period for which payments shall be made, or as to the amount to be paid, because of a change in conditions since the making of such agreement, either party may then make an application to the board for the determination of the matters in dispute. When compensation which is payable in accordance with an award or by agreement approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned.

(b) The application making claim for compensation filed with the worker's compensation board shall state the following:

- (1) The approximate date of the last day of the last exposure and the approximate date of the disablement.
- (2) The general nature and character of the illness or disease claimed.
- (3) The name and address of the employer by whom employed on the last day of the last exposure, and if employed by any other employer after such last exposure and before disablement, the name and address of such other employer or employers.
- (4) In case of death, the date and place of death.
- (5) Amendments to applications making claim for compensation which relate to the same disablement or disablement resulting in death originally claimed upon may be allowed by the board in its discretion, and, in the exercise of such discretion, it may, in proper cases, order a trial de novo. Such amendment shall relate back to the date of the filing of the original application so amended.

(c) Upon the filing of such application, the board shall set the date of hearing, which shall be as early as practicable, and shall notify the parties, in the manner prescribed by the board, of the time and place of

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hearing. The hearing of all claims for compensation on account of occupational disease shall be held in the county in which the last exposure occurred or in any adjoining county, except when the parties consent to a hearing elsewhere. Claims assigned to an individual board member that are considered to be of an emergency nature by that board member, may be heard in any county within the board member's jurisdiction.

(d) The board by any or all of its members shall hear the parties at issue, their representatives, and witnesses, and shall determine the dispute in a summary manner. The award shall be filed with the record of proceedings, and a copy thereof shall immediately be sent by registered mail to each of the parties in dispute.

(e) If an application for review is made to the board within thirty (30) days from the date of the award made by less than all the members, the full board, if the first hearing was not held before the full board, shall review the evidence, or, if deemed advisable, hear the parties at issue, their representatives, and witnesses as soon as practicable, and shall make an award and file the same with the finding of the facts on which it is based and send a copy thereof to each of the parties in dispute, in like manner as specified in subsection (d).

(f) An award of the board by less than all of the members as provided in this section, if not reviewed as provided in this section, shall be final and conclusive. An award by the full board shall be conclusive and binding unless either party to the dispute, within thirty (30) days after receiving a copy of such award, appeals to the court of appeals under the same terms and conditions as govern appeals in ordinary civil actions. The court of appeals shall have jurisdiction to review all questions of law and of fact. The board, of its own motion, may certify questions of law to the court of appeals for its decision and determination. An assignment of errors that the award of the full board is contrary to law shall be sufficient to present both the sufficiency of the facts found to sustain the award and the sufficiency of the evidence to sustain the finding of facts. All such appeals and certified questions of law shall be submitted upon the date filed in the court of appeals, shall be advanced upon the docket of the court, and shall be determined at the earliest practicable date, without any extensions of time for filing briefs. An award of the full board affirmed on appeal, by the employer, shall be increased thereby five percent (5%), and by order of the court may be increased ten percent (10%).

(g) Upon order of the worker's compensation board made after five (5) days notice is given to the opposite party, any party in interest may file in the circuit or superior court of the county in which the

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disablement occurred a certified copy of the memorandum of agreement, approved by the board, or of an order or decision of the board, or of an award of the full board unappealed from, or of an award of the full board affirmed upon an appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though such judgment has been rendered in a suit duly heard and determined by the court. Any such judgment of such circuit or superior court, unappealed from or affirmed on appeal or modified in obedience to the mandate of the court of appeals, shall be modified to conform to any decision of the industrial board ending, diminishing, or increasing any weekly payment under the provisions of subsection (i) upon the presentation to it of a certified copy of such decision.

(h) In all proceedings before the worker's compensation board or in a court under the compensation provisions of this chapter, the costs shall be awarded and taxed as provided by law in ordinary civil actions in the circuit court. **Prejudgment interest shall be awarded at a rate of eight percent (8%) per year accruing from the date of filing of the application for adjustment of claim as determined under subsection (a).**

(i) The power and jurisdiction of the worker's compensation board over each case shall be continuing, and, from time to time, it may, upon its own motion or upon the application of either party on account of a change in conditions, make such modification or change in the award ending, lessening, continuing, or extending the payments previously awarded, either by agreement or upon hearing, as it may deem just, subject to the maximum and minimum provided for in this chapter. When compensation which is payable in accordance with an award or settlement contract approved by the board is ordered paid in a lump sum by the board, no review shall be had as in this subsection mentioned. Upon making any such change, the board shall immediately send to each of the parties a copy of the modified award. No such modification shall affect the previous award as to any money paid thereunder. The board shall not make any such modification upon its own motion, nor shall any application therefor be filed by either party after the expiration of two (2) years from the last day for which compensation was paid under the original award made either by agreement or upon hearing, except that applications for increased permanent partial impairment are barred unless filed within one (1) year from the last day for which compensation was paid. The board may at any time correct any clerical error in any finding or award.



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(j) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified physician or surgeon to make any necessary medical examination of the employee and to testify in respect thereto. Such physician or surgeon shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such physician or surgeon shall be paid by the state only on special order of the board or a member thereof.

(k) The board or any member thereof may, upon the application of either party or upon its own motion, appoint a disinterested and duly qualified industrial hygienist, industrial engineer, industrial physician, or chemist to make any necessary investigation of the occupation in which the employee alleges that ~~he~~ **the employee** was last exposed to the hazards of the occupational disease claimed upon, and testify with respect to the occupational disease health hazards found by such person or persons to exist in such occupation. Such person or persons shall be allowed traveling expenses and a reasonable fee, to be fixed by the board. The fees and expenses of such persons shall be paid by the state, only on special order of the board or a member thereof.

(l) Whenever any claimant misconceives the claimant's remedy and files an application for adjustment of a claim under IC 22-3-2 through IC 22-3-6 and it is subsequently discovered, at any time before the final disposition of such cause, that the claim for injury or death which was the basis for such application should properly have been made under the provisions of this chapter, then the application so filed under IC 22-3-2 through IC 22-3-6 may be amended in form or substance or both to assert a claim for such disability or death under the provisions of this chapter, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and such compensation may be awarded as is warranted by the whole evidence pursuant to the provisions of this chapter. When such amendment is submitted, further or additional evidence may be heard by the worker's compensation board when deemed necessary. Nothing in this section contained shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice or time for filing a claim, but notice of filing of a claim, if given or done, shall be deemed to be a notice or filing of a claim under the provisions of this chapter if given or done within the time required in this chapter.

SECTION 23. IC 22-4-2-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 22. "Valid claim" means a claim filed by an individual who has established qualifying wage credits and who is totally, partially, or part-totally unemployed;



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Provided, no individual in a benefit period may file a valid claim for a ~~waiting period~~ or benefit period rights with respect to any period subsequent to the expiration of such benefit period.

SECTION 24. IC 22-4-2-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 29. "Insured unemployment" means unemployment during a given week for which waiting period credit or benefits, **if applicable**, are claimed under the state employment security program, the unemployment compensation for federal employees program, the unemployment compensation for veterans program, or the railroad unemployment insurance program.

SECTION 25. IC 22-4-4-3, AS AMENDED BY P.L.30-2000, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) For calendar quarters beginning on and after April 1, 1979, and before April 1, 1984, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand six hundred sixty-six dollars (\$3,666) and may not include payments specified in section 2(b) of this chapter.

(b) For calendar quarters beginning on and after April 1, 1984, and before April 1, 1985, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed three thousand nine hundred twenty-six dollars (\$3,926) and may not include payments specified in section 2(b) of this chapter.

(c) For calendar quarters beginning on and after April 1, 1985, and before January 1, 1991, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand one hundred eighty-six dollars (\$4,186) and may not include payments specified in section 2(b) of this chapter.

(d) For calendar quarters beginning on and after January 1, 1991, and before July 1, 1995, "wage credits" means remuneration paid for employment by an employer to an individual. Wage credits may not exceed four thousand eight hundred ten dollars (\$4,810) and may not include payments specified in section 2(b) of this chapter.

(e) For calendar quarters beginning on and after July 1, 1995, and before July 1, 1997, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand dollars (\$5,000) and may not include payments specified in section 2(b) of this chapter.

(f) For calendar quarters beginning on and after July 1, 1997, and before July 1, 1998, "wage credits" means remuneration paid for

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employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand four hundred dollars (\$5,400) and may not include payments specified in section 2(b) of this chapter.

(g) For calendar quarters beginning on and after July 1, 1998, and before July 1, 1999, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand six hundred dollars (\$5,600) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(h) For calendar quarters beginning on and after July 1, 1999, and before July 1, 2000, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed five thousand eight hundred dollars (\$5,800) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(i) For calendar quarters beginning on and after July 1, 2000, and before July 1, 2001, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed six thousand seven hundred dollars (\$6,700) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(j) For calendar quarters beginning on and after July 1, 2001, and before July 1, 2002, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed seven thousand three hundred dollars (\$7,300) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(k) For calendar quarters beginning on and after July 1, 2002, **and before July 1, 2003**, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not

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exceed seven thousand nine hundred dollars (\$7,900) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

(l) For calendar quarters beginning on and after July 1, 2003, "wage credits" means remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities in accordance with Sections 3102 and 3301 et seq. of the Internal Revenue Code. Wage credits may not exceed eight thousand five hundred dollars (\$8,500) and may not include payments that are excluded from the definition of wages under section 2(b) of this chapter.

SECTION 26. IC 22-4-14-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. ~~As a condition precedent to the payment of benefits to an individual with respect to any week such individual shall be required to serve a waiting period of one (1) week in which he has been totally, partially or part-totally unemployed and with respect to which he has received no benefits, but during which he was eligible for benefits in all other respects and was not otherwise ineligible for benefits under any provisions of this article. Such waiting period shall be a week in the individual's benefit period and during such week such individual shall be physically and mentally able to work and available for work. No~~ An individual in a benefit period may ~~not~~ file for ~~waiting period or~~ benefit period rights with respect to any subsequent period. ~~Provided, however, That no waiting period shall be required as a prerequisite for drawing extended benefits. "~~

Page 19, between lines 25 and 26, begin a new paragraph and insert:

SECTION 28. IC 22-4-15-2, AS AMENDED BY P.L.290-2001, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) With respect to benefit periods established on and after July 3, 1977, an individual is ineligible for ~~waiting period or~~ benefit rights, or extended benefit rights, if the department finds that, being totally, partially, or part-totally unemployed at the time when the work offer is effective or when the individual is directed to apply for work, the individual fails without good cause:

- (1) to apply for available, suitable work when directed by the commissioner, the deputy, or an authorized representative of the department of workforce development or the United States training and employment service;
- (2) to accept, at any time after the individual is notified of a separation, suitable work when found for and offered to the individual by the commissioner, the deputy, or an authorized



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representative of the department of workforce development or the United States training and employment service, or an employment unit; or

(3) to return to the individual's customary self-employment when directed by the commissioner or the deputy.

(b) With respect to benefit periods established on and after July 6, 1980, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of eight (8) weeks. If the qualification amount has not been earned at the expiration of an individual's benefit period, the unearned amount shall be carried forward to an extended benefit period or to the benefit period of a subsequent claim.

(c) With respect to extended benefit periods established on and after July 5, 1981, the ineligibility shall continue for the week in which the failure occurs and until the individual earns remuneration in employment equal to or exceeding the weekly benefit amount of the individual's claim in each of four (4) weeks.

(d) If an individual failed to apply for or accept suitable work as outlined in this section, the maximum benefit amount of the individual's current claim, as initially determined, shall be reduced by twenty-five percent (25%). If twenty-five percent (25%) of the maximum benefit amount is not an even dollar amount, the amount of such reduction shall be raised to the next higher even dollar amount. The maximum benefit amount of the individual's current claim may not be reduced by more than twenty-five percent (25%) during any benefit period or extended benefit period.

(e) In determining whether or not any such work is suitable for an individual, the department shall consider:

- (1) the degree of risk involved to such individual's health, safety, and morals;
- (2) the individual's physical fitness and prior training and experience;
- (3) the individual's length of unemployment and prospects for securing local work in the individual's customary occupation; and
- (4) the distance of the available work from the individual's residence.

However, work under substantially the same terms and conditions under which the individual was employed by a base-period employer, which is within the individual's prior training and experience and physical capacity to perform, shall be considered to be suitable work unless the claimant has made a bona fide change in residence which

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makes such offered work unsuitable to the individual because of the distance involved.

(f) Notwithstanding any other provisions of this article, no work shall be considered suitable and benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
- (2) If the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality.
- (3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining a bona fide labor organization.
- (4) If as a condition of being employed the individual would be required to discontinue training into which the individual had entered with the approval of the department.

(g) Notwithstanding subsection (e), with respect to extended benefit periods established on and after July 5, 1981, "suitable work" means any work which is within an individual's capabilities. However, if the individual furnishes evidence satisfactory to the department that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good, the determination of whether any work is suitable work shall be made as provided in subsection (e).

(h) With respect to extended benefit periods established on and after July 5, 1981, no work shall be considered suitable and extended benefits shall not be denied under this article to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (1) If the gross average weekly remuneration payable to the individual for the position would not exceed the sum of:
 - (A) the individual's average weekly benefit amount for the individual's benefit year; plus
 - (B) the amount (if any) of supplemental unemployment compensation benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code) payable to the individual for such week.
- (2) If the position was not offered to the individual in writing or was not listed with the department of workforce development.
- (3) If such failure would not result in a denial of compensation under the provisions of this article to the extent that such

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provisions are not inconsistent with the applicable federal law.

(4) If the position pays wages less than the higher of:

(A) the minimum wage provided by 29 U.S.C. 206(a)(1) (The Fair Labor Standards Act of 1938), without regard to any exemption; or

(B) the state minimum wage (IC 22-2-2).

(i) The department of workforce development shall refer individuals eligible for extended benefits to any suitable work (as defined in subsection (g)) to which subsection (h) would not apply.

SECTION 29. IC 22-4-15-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. **(a)** An individual shall be ineligible for ~~waiting period or~~ benefit rights for any week with respect to which ~~his~~ **the individual's** total or partial or part-total unemployment is due to a labor dispute at the factory, establishment, or other premises at which ~~he~~ **the individual** was last employed.

(b) This section shall not apply to an individual if:

(1) ~~he~~ **the individual** has terminated ~~his~~ **the individual's** employment, or ~~his~~ **the individual's** employment has been terminated, with the employer involved in the labor dispute; ~~or if~~

(2) the labor dispute which caused ~~his~~ **the individual's** unemployment has terminated and any period necessary to resume normal activities at ~~his~~ **the individual's** place of employment has elapsed; or if

(3) all of the following conditions exist: ~~He~~

(A) ~~The individual~~ is not participating in or financing or directly interested in the labor dispute which caused ~~his~~ **the individual's** unemployment. ~~and he~~

(B) ~~The individual~~ does not belong to a grade or class of workers of which, immediately before the commencement of ~~his~~ **the individual's** unemployment, there were members employed at the same premises as ~~he~~; **the individual**, any of whom are participating in or financing or directly interested in the dispute. ~~and he~~

(C) ~~The individual~~ has not voluntarily stopped working, other than at the direction of ~~his~~ **the worker's** employer, in sympathy with employees in some other establishment or factory in which a labor dispute is in progress.

(c) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

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(d) Upon request of any claimant or employer involved in an issue arising under this section, the deputy shall, and in any other case the deputy may, refer claims of individuals with respect to whom there is an issue of the application of this section to an administrative law judge who shall make the initial determination with respect thereto, in accordance with the procedure in IC 22-4-17-3.

(e) Notwithstanding any other provisions of this article, an individual shall not be ineligible for ~~waiting period or~~ benefit rights under this section solely by reason of ~~his~~ **the individual's** failure or refusal to apply for or to accept recall to work or reemployment with an employer during the continuance of a labor dispute at the factory, establishment, or other premises of the employer, if the individual's last separation from the employer occurred prior to the start of the labor dispute and was permanent or for an indefinite period.

SECTION 30. IC 22-4-15-4, AS AMENDED BY P.L.290-2001, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 4. (a) An individual ~~shall be~~ **is** ineligible for ~~waiting period or~~ benefit rights for any week with respect to which the individual receives, is receiving, or has received payments equal to or exceeding ~~his~~ **the individual's** weekly benefit amount in the form of:

(1) deductible income as defined and applied in IC 22-4-5-1 and IC 22-4-5-2; or

(2) any pension, retirement or annuity payments, under any plan of an employer whereby the employer contributes a portion or all of the money. This disqualification shall apply only if some or all of the benefits otherwise payable are chargeable to the experience or reimbursable account of ~~such~~ **the** employer, or would have been chargeable except for the application of this chapter. ~~For the~~ purposes of this subdivision, ~~(2)~~; federal old age, survivors, and disability insurance benefits are not considered payments under a plan of an employer whereby the employer maintains the plan or contributes a portion or all of the money to the extent required by federal law.

(b) If the payments described in subsection (a) are less than ~~his~~ **the individual's** weekly benefit amount, an otherwise eligible individual ~~shall be~~ **is** not be ineligible and shall be entitled to receive for such week benefits reduced by the amount of such payments.

(c) This section does not preclude an individual from delaying a claim to pension, retirement, or annuity payments until the individual has received the benefits to which the individual would otherwise be eligible under this chapter. Weekly benefits received before the date the individual elects to retire shall not be reduced by any pension,

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retirement, or annuity payments received on or after the date the individual elects to retire.

SECTION 31. IC 22-4-15-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 5. Except as provided in IC ~~1971~~, 22-4-22, an individual ~~shall be~~ **is** ineligible for ~~waiting period or~~ benefit rights for any week with respect to which or a part of which ~~he~~ **the individual** receives, is receiving, has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States. ~~Provided, that~~ **However,** this disqualification shall not apply if the appropriate agency of such other state or of the United States finally determines that ~~he~~ **the individual** is not entitled to such employment benefits, including benefits to federal civilian employees and ex-servicemen pursuant to 5 U.S.C. Chapter 85.

SECTION 32. IC 22-4-16-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 1. Notwithstanding any other provisions of this article, if an individual knowingly fails to disclose amounts earned during any week in ~~his waiting period,~~ **the individual's** benefit period or extended benefit period with respect to which benefit rights or extended benefit rights are claimed, or knowingly fails to disclose or has falsified as to any fact ~~which that~~ would have disqualified ~~him~~ **the individual** or rendered ~~him~~ **the individual** ineligible for benefits or extended benefits or would have reduced ~~his~~ **the individual's** benefit rights or extended benefit rights during such a week, all of ~~his~~ **the individual's** wage credits established prior to the week of the falsification or failure to disclose shall be ~~cancelled,~~ **canceled,** and any benefits or extended benefits ~~which that~~ might otherwise have become payable to ~~him~~ **the individual** and any benefit rights or extended benefit rights based upon those wage credits shall be forfeited.

SECTION 33. IC 22-4-17-2, AS AMENDED BY P.L.290-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) When an individual files an initial claim, the department shall promptly make a determination of ~~his~~ **the individual's** status as an insured worker in a form prescribed by the board. A written notice of the determination of insured status shall be furnished ~~him to the individual~~ promptly. Each such determination shall be based on and include a written statement showing the amount of wages paid to the individual for insured work by each employer during the individual's base period and shall include a finding as to whether such wages meet the requirements for the individual to be an insured worker, and, if so, the week ending date of the first week of the



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individual's benefit period, the individual's weekly benefit amount, and the maximum amount of benefits that may be paid to the individual for weeks of unemployment in the individual's benefit period. For the individual who is not insured, the notice shall include the reason for the determination. Unless the individual, within twenty (20) days after such determination was mailed to the individual's last known address, or otherwise delivered to the individual, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits shall be paid or denied in accordance therewith.

(b) The department shall promptly furnish each employer in the base period whose experience or reimbursable account is potentially chargeable with benefits to be paid to such individual with a notice in writing of the employer's benefit liability. Such notice shall contain the date, the name and social security account number of the individual, the ending date of the individual's base period, and the week ending date of the first week of the individual's benefit period. Such notice shall further contain information as to the proportion of benefits chargeable to the employer's experience or reimbursable account in ratio to the earnings of such individual from such employer. Unless the employer, within twenty (20) days after such notice of benefit liability was mailed to the employer's last known address, or otherwise delivered to the employer, asks a hearing thereon before an administrative law judge, such determination shall be final and benefits paid shall be charged in accordance therewith.

(c) An employing unit, including an employer, having knowledge of any facts which may affect an individual's eligibility or right to waiting period credits or benefits, shall notify the department of such facts within twenty (20) days after the mailing of notice that a former employee has filed an initial or additional claim for benefits on a form prescribed by the board.

(d) In addition to the foregoing determination of insured status by the department, the deputy shall, throughout the benefit period, determine the claimant's eligibility with respect to each week for which the claimant claims ~~waiting period credit~~ or benefit rights, the validity of the claimant's claim therefor, and the cause for which the claimant left the claimant's work, or may refer such claim to an administrative law judge who shall make the initial determination with respect thereto in accordance with the procedure in IC 22-4-17-3.

(e) In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer or employers directly involved or connected with the issue raised as to the validity of such claim, the eligibility of

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the claimant for ~~waiting period credit~~ or benefits, or the imposition of a disqualification period or penalty, or the denial thereof, and of the cause for which the claimant left the claimant's work, of such determination and the reasons thereof. Except as otherwise hereinafter provided in this subsection regarding parties located in Alaska, Hawaii, and Puerto Rico, unless the claimant or such employer, within twenty (20) days after such notification was mailed to the claimant's or the employer's last known address, or otherwise delivered to the claimant or the employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. With respect to notice of disputed administrative determination or decision mailed or otherwise delivered to the claimant or employer either of whom is located in Alaska, Hawaii, or Puerto Rico, unless such claimant or employer, within twenty-five (25) days after such notification was mailed to the claimant's or employer's last known address or otherwise delivered to the claimant or employer, asks a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith. If such hearing is desired, the request therefor shall be filed with the commissioner in writing within the prescribed periods as above set forth in this subsection and shall be in such form as the board may prescribe. In the event a hearing is requested by an employer or the department after it has been administratively determined that benefits should be allowed to a claimant, entitled benefits shall continue to be paid to said claimant unless said administrative determination has been reversed by a due process hearing. Benefits with respect to any week not in dispute shall be paid promptly regardless of any appeal.

(f) ~~No~~ A person may **not** participate on behalf of the department in any case in which the person is an interested party.

(g) Solely on the ground of obvious administrative error appearing on the face of an original determination, and within the benefit year of the affected claims, the commissioner, or a representative authorized by the commissioner to act in the commissioner's behalf, may reconsider and direct the deputy to revise the original determination so as to correct the obvious error appearing therein. Time for filing an appeal and requesting a hearing before an administrative law judge regarding the determinations handed down pursuant to this subsection shall begin on the date following the date of revision of the original determination and shall be filed with the commissioner in writing within the prescribed periods as above set forth in subsection (c).

(h) Notice to the employer and the claimant that the determination

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of the department is final if a hearing is not requested shall be prominently displayed on the notice of the determination which is sent to the employer and the claimant."

Page 24, delete line 39.

Renumber all SECTIONS consecutively.

(Reference is to ESB 71 as printed February 22, 2002.)

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